WILLIAM SHILLABER

VS.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, ET AL.

COMPLETE INDEX

	Page
ALVIN S. CUTLER (for Complainant):	
Direct examination, Vol. 2	909–952
Complainant's Exhibit 28	917
" " 29	918
" " 30	950
LESTER B. ELWOOD (for Complainant):	
Direct examination, Vol. 2	982–985
Cross-examination	985–987
Re-direct examination	987–992
CONWAY W. HILLMAN (for Defendants):	
Direct examination, Vol. 3	1118–1154
Defendants' Exhibit L	1118
Cross-examination	1154–1162
Re-direct examination	1162–1165
Defendants' Exhibit M	1168
DWIGHT C. MORGAN (for Defendants):	
Direct examination, Vol. 3	1056
Defendants' Exhibit I	1056
" " J	1056
Cross-examination	1057–1117
Complainant's Exhibit 31	1058
Defendants' Exhibit K	1117

LEMUEL G. SCOTT (for Complainant):

	Page
Direct examination, Vol. 1	3–27
Complainant's Exhibit 2	7
" " 3	7
" " 4	8
" " 5	9
" " 6	10
" " 7	13
" " 8	14
" " 9	15
" " 10	16
" " 11	17
" " 12	18
" " 13	18
" " 14	19
" " 15	21
" " 16	22
" " 17	23
" " 18	24
" " 19	27
Cross-examination	28–87

LEMUEL G. SCOTT—Recalled:

Cross-examination, Vol. 2	544–767
Defendants' Exhibit D	591
" " E	605
Complainant's Exhibit 7-A	607
Defendants' Exhibit F	636
" " G	644
" " H-1	665
" " H-2	757
" " H-3	756
" " H-4	756

JAMES N. TITTEMORE (for Complainant):

Direct examination, Vol. 1	88–121
Complainant's Exhibit 20	110
Cross-examination	121–542
Defendants' Exhibit A	366
" " B	471
" " C	485

	Page
JAMES N. TITTEMORE—Recalled:	
Direct examination, Vol. 2	767–909
Complainant's Exhibit 21	770
" " 21-A	773
" " 22	790
" " 22-A	790
" " 23	798
" " 24	806
" " 25	828
" " 26	838
" " 14-A	847
JAMES N. TITTEMORE—Recalled:	
Direct examination	958–982
Complainant's Exhibit 15-A	968
JAMES N. TITTEMORE—Recalled:	
Cross-examination	993–1048
Direct examination	1048–1053

UNITED STATES CIRCUIT COURT,

DISTRICT OF MINNESOTA,

THIRD DIVISION.

(In Equity.)

WILLIAM SHILLABER,
Complainant,

vs.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (SUBSTITUTED FOR EDWARD T. YOUNG) IRA B. MILLS, CHARLES F. STAPLES, AND CHARLES E. ELMQUIST (SUBSTITUTED FOR WILLIAM E. YOUNG.)
Defendants.

APPEARANCES:

HOW, BUTLER & MITCHELL,
Solicitors for Complainant,

EDWARD T. YOUNG, Attorney General of the State of Minnesota,

THOMAS D. O'BRIEN and EDMUND S. DURMENT,
Solicitors for Defendants Railroad & Warehouse Commission, et al.

VOLUME 3.

CHAS. E. OTIS, Master.

GEO. N. HILLMAN, Reporter.

FEDERAL BUILDING, St. Paul, Minn., February 15, 1909, the hearing was resumed at 2 P. M.

DWIGHT C. MORGAN,
sworn on behalf of Defendants, testified.

By Mr. O'BRIEN:

Q. Mr. Morgan, did you make a valuation of the Minneapolis & St. Louis Railroad Company property in the state of Minnesota?

A. I did.

Q. And did you make that valuation in the same manner and with the same attention to detail that you used in ascertaining the values of the property of the Northern Pacific Company?

A. I did.

Q. Have you prepared a summary of the conclusions arrived at by you, omitting any multiple because of railway value as described in the Northern Pacific case?

A. I have.

Q. And also omitting the item of adaptation and solidification of roadbed?

A. I have.

Witness produces statement marked for identification "Defts' Ex. I—Morgan."

Mr. O'BRIEN: I offer Defts' Ex. I—Morgan in evidence.

Q. Have you prepared a similar summary in which the lands are valued with the use of the multiple or in which the right-of-way value of the lands is included?

A. I have.

Witness produces statement marked for identification "Defts' Ex. J—Morgan."

Mr. O'BRIEN: We offer Defts' Ex. J—Morgan in evidence.

Adjourned until the morning of February 16, 1909.

FEDERAL BUILDING, St. Paul, Minn., Tuesday, February 16, 1909, the hearing was resumed at 10 o'clock A. M.

DWIGHT C. MORGAN,
recalled on behalf of Defendants, testified.

CROSS-EXAMINATION

By Mr. BUTLER:

Q. Mr. Morgan, you were present at the time that Mr. A. S. Cutler, one of the Complainant's witnesses, testified in this case, were you?

A. I believe I was, yes.

Q. And you are familiar with the exhibits which were introduced in connection with his testimony, are you?

A. Yes, I have seen most of them if not all of them.

Q. Now, in the matter of the valuation of this Company's property in Minnesota, they made to you a report as of June 30, 1906?

A. Yes.

Q. On blanks furnished them for that purpose, which are here in evidence?

A. Yes.

Q. Now, afterwards you required them, did you, to furnish you a statement of the additions made from June 30, 1906, to June 30, 1907?

A. No, only so far as related to the equipment.

Q. Only as far as equipment is concerned?

A. That is all. On inspection of the line we got a good many of the changes that had taken place from June 30, 1906, to June 30, 1907. Of course, there were some changes in the equipment that it was impossible to determine because some of it might have been off from the line, and for that reason we asked the Company to make a statement.

Q. Well, about the time that Mr. Cutler testified in this case, you and he made comparison of the estimates made by

each of you to find out where the differences were and the amount of them?

A. Yes, we did.

Q. And together you made a statement of such differences, did you?

A. Yes.

Q. And at that time he provided you with a statement of the additions that had been made with respect to each of the items upon your summary blank between June 30, 1906, and the 30th of June, 1907, so as to bring their report down to the same date of your findings?

A. I believe a statement of that kind was furnished, although I am not positive that it was, I am unable to recall now. This summarized statement here was typed in my office, my assistant, Mr. Jurgensen, and Mr. Cutler went over it and prepared the data. We have never had a copy of those papers as I recall, but Mr. Jurgensen and Mr. Cutler worked up this table from the data that Mr. Cutler had and from the data that we had.

Q. And from the report made by the Company, the report of additions and betterments, made for the year between June 30, 1906, and 1907, and from your own findings, a table was made, was there not, showing the Complainant's claims with respect to reproduction cost June 30, 1906, the same for June 30, 1907, and the additions and betterments shown separately, and also additions and betterments to June 30, 1908, and the total showing the Company's reproduction cost June 30, 1908, together with your reproduction cost of June 30, 1907, and the difference between the Company's June 30, 1907, cost and yours, and the difference between the Company's June 30, 1908, cost and your June 30, 1907, cost?

A. Correct.

Mr. BUTLER: Now, we will have this marked.

(Statement produced marked "Complainant's Ex. 31- Morgan.")

Mr. O'BRIEN: This table is the basis of the State's claim, Estimate A?

WITNESS: Yes.

Mr. O'BRIEN: Estimate B does not appear in this?

WITNESS: Does not appear in this; this was made prior to the time that Estimate B was finished.

Q. Column 7 shows the difference between column 3 and column 6, and that is a comparison between the State's finding and the Complainant's claim as of the same date, June 30, 1907, isn't it?

A. Correct.

Q. Now, with respect to Item 1, land for right-of-way, yards and terminals, there appears to be a difference of $3,525,861. My recollection is, Mr. Morgan, that that difference was located territorially and is wholly confined to the property of the Company in the city of Minneapolis; am I right about that?

A. Yes, and between the city of Minneapolis and Hopkins, largely.

Q. In Hennepin county, at any rate?

A. Yes.

Q. And that your valuation and that of the Company with respect to this item "Lands for right-of-way, yards and terminals" agreed in total as to the rest of the property in the state?

A. Yes, I think the figures were substantially the same so far as the balance.

Q. Varied in some districts somewhat, but taking it all together outside of Minneapolis, you came out at the same place, substantially?

A. Yes.

Q. Now, the grading, clearing and grubbing shows a difference of $690,529. Item 2 is not on the same basis by the Company as you did it; that is, you made a separate item

of 29, adaptation and solidification of roadbed, and the Company, as you understand their intention, intended to include that element in Item 2,—

A. Yes.

Q. —your blanks calling for no separate item?

A. Yes, they did show it under that heading by adding a percentage to the cost of the grading.

Q. They show it separately under 29 or under 2?

A. No, under grading, under 2.

Q. It was included in Item 2?

A. Yes, sir.

Q. Your blanks didn't furnish any statement or instructions for this item called adaptation and solidification of roadbed?

A. No, that was left blank.

Q. The number was left there?

A. Yes.

Q. But there was no characterization, so this Company included in Item 2 the element you include in 29?

A. Yes.

Q. So that difference of $690,529 is reduced by your red figure $608,896?

A. Yes, if it is all added to the grading that is true.

Q. Well, that is where it would have to go, wouldn't it? It would have to be either in Item 2 or in a separate item —29, it couldn't be any place else?

A. Yes, that is probably where it would go, at least a large part of it.

Q. Now, I note a difference in column 7 of $203,090 against Item 5, cross-ties and switch-ties. I understand that there is no difference between you and the Company with respect to the number or kind of ties.

A. Yes, there is a difference in respect to the number of ties.

Q. What is the difference in number, as of the same time, June 30, 1907?

A. Well, according to my estimate of the number of cross-ties on the Minneapolis & St. Louis, we find 41,000 ties less than they reported. The reason for that is manifest from the report of the Company, where some of the sidetracks have been put in from 3,378 ties to the mile to 4,049 ties to the mile, while their main track in no place exceeds 3,115. Now, of course, it is all out of proportion that sidetrack should have more ties in it than the main track.

Q. Well, on the line of this Company, no matter whether it is out of proportion or in proportion, what is the fact? Do you correspond with respect to the main line?

A. We run a little bit over, in respect to the main lines, in some cases and in other cases a little bit under.

Q. Well, on the whole?

A. I should say they average pretty nearly the same.

Q. What is the main-line mileage?

The MASTER: By main line you mean the main track?

Mr. BUTLER: Well, I will see how he carries it.

A. About 387 miles.

Q. What do you mean by the main line?

A. Well, that takes in first main track and the second main track, then double track between Minneapolis and Hopkins.

Q. "Passing-tracks,"—that comes in under the head of sidetracks, etc?

A. They have about 102 miles.

Q. 102 miles of sidetracks; so this difference of 41,000 ties is all to be found on the sidetracks?

A. Well, I wouldn't say that it is all to be found,—I said that, as a total, there was a difference of 41,000 ties. Now, some of that is undoubtedly on the main track. For example, here is the section between Minneapolis and Hopkins, where

the Minneapolis & St. Louis reports 3,115 ties per mile and we get 3,168. Between Hopkins and Albert Lea the Railroad Company reports 3,053 and we get 3,168. Between Albert Lea and Emmons they report 3,062 and we get 2,992. Between Hopkins and Newton they report 3,038 and we get 3,168. Between Newton and the South Dakota state line 3,055 by the Railroad Company and we get 2,992. Winthrop to the Iowa state line, the Railroad Company reports 3,028 and we get 2,992. They are not very large differences, but they are enough to make up part of the forty thousand.

Q. Those that you have just given us are on the main line?

A. On the main line, yes.

Q. Do you agree in mileage as to what is main line with the Company?

A. Oh, yes, sir.

Q. And do you agree in mileage as to the sidetrack?

A. Yes, sir.

Q. Now, on this 102 miles of sidetrack, how many ties difference between you?

A. Well, they report between Minneapolis and Hopkins 4,049 ties per mile in sidetrack; we get 2,992.

Q. Is there any difference in the method of counting?

A. I don't know what method the M. & St. L. pursued. I know what method I pursued,—take the actual measurements in distances of 52.8 feet, (which is one one-hundredth part of a mile) and by those continuous check-counts we get an average.

Q. How much of that siding did you count of that 102 miles?

A. Oh, I don't know, Mr. Butler; we made check-measurements wherever we stopped.

Q. Do your records show? Can you show us how much of that you actually counted if you take time and go to your

original notes, field-notes or whatever you call them?

A. I think I can, yes.

Q. Will you do so?

A. Yes.

Q. I would like to know how many you have counted and what proportion of the 102 miles you counted and what the difference is; and also what the difference is on the main line as of the same date, June 30, 1907. Item 6, ballasting,—I observe (comparing your finding of June 30, 1907, with the Company's report of the same time) that you increase that item $21,110; am I right about that? How does that happen?

A. That is because some of the line was ballasted subsequent to their report.

Q. No, but this is of the same date. This column 7 compares the same date, does it not? You found more ballast or gave them a higher price?

A. Well, I think the probability is we found more ballast. I don't think that our price was quite as high per cubic yard as that turned in by the M. & St. L.

Q. What was your price per cubic yard?

A. 45 cents per cubic yard.

Q. What was theirs?

A. I don't recall now; I think it was about 50 cents.

Q. Item 10, track-laying and surfacing,—what was your price per mile and how many miles did you allow?

A. In the terminals in Minneapolis we used $600 a mile for track-laying and surfacing.

Q. How many miles? I would like to get an itemized exhibit or statement in to the record on the basis of your computations, so that we will know just the way you got at your figure; there is a substantial difference here; we want to see if we can find out how it arises.

A. About 57 miles in the terminals at $600 a mile; and the balance of the system—

Q. How many miles?

A. 437 miles at $500.

Q. How was the $600 rate per mile in the terminals built up? and give the elements.

A. That was based upon the extra switches which were necessary to put in in the terminals.

Q. I would like to have the figures showing how that $600 is built up, what the elements are, if you analyzed it any closer than to lump it at $600.

A. We analyzed it in detail, so far as the outlying apportionment of the line is concerned, and then added $100 per mile to cover the extra switches which would go in within the terminals in Minneapolis.

Q. That would give us the $500 track-laying outside of the city as the base, and then add the extra for the switches?

A. Yes.

Q. What were the elements making up the $500? What is included, and how much for each element?

A. Well, we figured that the contract price for track-laying would be $270 a mile.

Q. And when you say for track-laying, that means what? putting down the ties and putting the rails on top of them and spiking 'em that gauge?

A. The spiking, the entire laying of the track, and one switch per mile on an average of $25 each.

Q. Is that what the country line of the Minneapolis & St. Louis averages,—one a mile?

A. As nearly as we could get at it; that appeared to be a fair basis to use. Of course, the stations are some five or six or seven miles apart.

Q. Did you count the switches on the whole system?

A. No, we did not.

Q. Well, what next?

A. Well, the surfacing of the track includes fifteen la-

borers at $1.75 per day and one foreman at $2.

Q. That aggregates how much?

A. That amounts to $28.25 per day.

Q. How much per mile?

A. That would be per mile.

Q. Well, you say surfacing, fifteen laborers at $1.75 per day?

A. Yes, and they would surface a mile of track per day as far as it is laid; that is, surfacing it for construction work. That is not finishing up the track, by any means; it is surfacing the track, putting it in suitable condition for the construction trains to move over it.

Q. And what else?

A. Well, the handling of construction material is the next item, in which we figured 105 tons of rail per mile.

Q. What do you mean by handling the construction material?

A. Well, that covers the handling of the ties and the fastenings and the rails from the material yard.

Q. How many handlings?

A. Two handlings of rail.

Q. Give us the tonnage.

A. 105 tons at 11 cents a ton for two handlings would give $23.14, for the handling of the rail, per mile.

Q. That eleven cents covers both handlings?

A. No, eleven cents each. Then there is 10.2 tons of track-fastenings handled twice at eleven cents a ton each time; that is $2.24. There are 2,800 cross-ties.

Q. That is the average on your estimate?

A. That is the base that we took for this computation.

Q. That is a little below your average, isn't it?

A. Well, I think, possibly it is a little bit below the average.

Q. 2,800 cross-ties?

A. Yes, at one cent each.

Q. That would be $28?

A. $28. We figured that only fifty per cent of those ties would be handled twice, that half of the ties would come forward from the point of origin and be handled direct to it on the construction work without being unloaded.

Q. That would be $28 for one handling and $14 for half a handling,—would be $42?

A. About $42, yes.

Q. Would be about $42 a mile for handling cross-ties?

A. Yes.

Q. What next?

A. Well, then comes the construction train service, in which we have the traincrew service at $9.77 per day, the enginecrew at $6.85 per day, and the consuming of three tons of coal, amounting to $10.50; 4,000 gallons of water per day at 25 cents per thousand gallons, or $1 for water; the oil, waste and supplies at 80 cents, a watchman at $1.75 per day. That amounts, all told, for the construction-train service, to $30.67.

Q. That aggregates what?

A. That aggregates $30.67 for the engine and crew that accompany the track-laying machine.

Q. For a day?

A. For a day.

Q. How many miles in a day?

A. One mile.

Q. So this is all reduced to miles?

A Yes; there is one engine and crew at the same expense.

Q. How much is the total of that?

A. $30.67. And there is also one engine and crew that is hauling material and serving the material yard.

Q. Wait a minute. This $30.67 means train service at $9.77 per day; engine $6.85; three tons of coal, $10.50; water $1; oil

and waste $1, and watchman $1.75?

A. Yes.

Q. Now, is that all there is to it?

A. That is all there is to the construction-train service so far as it relates to the track-laying machine.

Q. That is with the machine?

A. That is with the machine.

Q. Is there any other train service except what there is with the machine?

A. There is.

Q. That is what I want to get.

A. There is one engine and car that is hauling and serving the material yard.

Q What is that crew called?

A. This is the hauling crew, you might say, or the serving crew for material.

Q. Hauling material at the same price,—$30.67?

A. Yes.

Q. Is there anything else?

A. Then there comes in the equipment required for this service.

Q. You mean by equipment cars and engines?

A. Cars. The engines are provided. It takes into account the cars that are necessary for sleeping purposes, the cars that are necessary for water, the tool-car, dining-cars, kitchen-cars and office-cars, store-cars and flat-cars for handling ties and rails and supplies, and cabooses that accompany the two train-crews for the trainmen to sleep in, making a total of sixty-three cars that are necessary for that service, and the estimated cost of that equipment is $30,936.

Q. That $30,936 is the cost of the sixty-three cars?

A. Yes. Now, the annual depreciation on that equipment at 7 per cent would amount to $2,165.52.

Q. At 7 per cent?

A. And the depreciation per day would amount to $5.93.

Q. And you divide that amount by how many days?

A. By the days in the year.

Q. 365?

A. Yes; that would give you $5.93 daily depreciation of this equipment.

Q. And you charge that to a mile of track?

A. To a mile, yes, assuming that we are laying a mile of track a day. Of course, that is the basis.

Q. Well, that is a day's work or you would not asssume it?

A. Sometimes it is; sometimes they will lay two or three miles a day.

Q. That is the average?

A. Well, in all these cases I think it has beeen generally conceded that we would take a mile a day as a basis for representing what could be done.

The MASTER: When you speak of per day here, you mean per mile?

WITNESS: Yes, it is equivalent to per mile.

Q. That makes $5.93 for depreciation of equipment?

A. Yes. Now, then, there are two locomotives, that are valued at $12,500 each or $25,000; at 5 per cent annual depreciation there is $1,250 depreciation per annum; per day that would amount to $3.42.

Q. That is divided by 365?

A. Yes.

The MASTER: By depreciation you mean wear and tear?

WITNESS: Yes, the wear and tear of the car.

Q. What else?

A Well, we took the repairs to equipment.

Q. Repairs to cars and engines together or separately?

A. They were taken separately.

Q. Well, to the cars, then?

A. To the cars we assigned a repair charge of 20.15 cents per day.

Q. How did you get at that?

A. These statistics were all worked out from the details in the Northern Pacific case and we concluded that they were applicable near enough to the other lines of the state. The maintenance charges do not vary greatly between different roads, and therefore we assumed that the figures that we had obtained so far as the Northern Pacific is concerned were suitable to apply to the Minneapolis & St. Louis.

Q. Let me see if I understand right what is meant by this: Do I understand that the repairs to these sixty-three cars, worth $30,936, is figured at 20.15 cents per day while in use laying track?

A. Per car per day.

Q. And that would amount to what per mile?

A. That would amount to $12.69 per mile.

Q. Now, the engines, were there any repairs on them?

A. Yes, we have repairs to the locomotives taken at $5.95 per day.

Q. Each?

A. Each.

Q. Making $11.90 per mile?

A. $11.90 per mile.

Q. What else?

A. That covers the items that we took into account, and I think that will foot up to about $485.88 a mile.

Q. Well, let us check that, because I want to be sure I am right about this. The contractor's price is $270?

A. Yes.

Q. One switch per mile of track on the average $25?

A. Yes.

Q. Surfacing, fifteen laborers at $1.75 a day, and one foreman at $2 a day, would be $28.25 per day or per mile, either one?

A. Yes.

Q. Handling material, 105 tons of rail at 11 cents per ton for each handling, $23.14; is that right?

A. Yes.

Q. 10.2 tons of fastenings at the same rate per ton for each handling, $2.24?

A. Yes.

Q. 2,800 cross-ties, handled once and a half, 1 cent for each handling, $42?

A. Yes.

Q. The engine and train service with the track machine is $30.67?

A. Check.

Q. The hauling crew is the same?

A. Yes.

Q. The depreciation on equipment, cars, is $5.93 per mile of track laid; am I right?

A. That is per day or per mile.

Q. Well, that is per mile of track?

A. Yes.

Q. The depreciation on the two engines is $3.42 per mile of track laid?

A. Yes.

Q. The repairs to sixty-three cars is $12.69 per day or per mile of track?

A. Yes.

Q. And the repairs for the engines is $11.90 per day or per mile of track?

A. Yes.

Q. Making $485.88?

A. Yes, $485.91.

Q. Now, you called that, in your computation, $500 a mile on the Minneapolis & St. Louis outside of Minneapolis?

A. Yes.

Q. Did you use the same figures for each of the other rural

miles of railroad in Minnesota for track-laying?

A. Yes, I put in the same price for track-laying on different lines.

Q. So without regard to what part of the state or where it was, the price for track-laying and surfacing, which you include in your Item 10 in your analysis of this problem and in your reports to the Commission, you called it $500 flat everywhere?

A. Yes; it seemed to be a very safe figure to use.

Q. In the yard at Minneapolis you figured that there would be five switches to the mile and therefore added $100 more; there being one on the average to the mile in the country, it was because of some such an arrangement that you allowed $600 for the Minneapolis yard?

A. Yes, more switches in there.

Q. And you figured that the number of switches was five to the mile there?

A. Yes.

Q. Four more than the average in the country?

A. Yes; that would probably cover it as near as could be done.

Q. Now, does your mileage in Minneapolis and outside of Minneapolis agree with the Company's?

A. I think it does, substantially, yes.

Q. Did you get at the figures that they made per mile for this Item 10?

A. No, I know nothing about the figures at all that they turned in; in fact, the Minneapolis & St. Louis report was lumped in such a way that it could not be analyzed; there were no details given that would enable one to analyze it, and Mr. Kelly had gone away and Mr Wheeler, the present chief engineer, not knowing anything about it, it was impossible, in fact, or very difficult to get any data from the Minneapolis & St Louis. We made every effort possible to do so, but it did

not seem that we could get the information.

Q. So you are not able to ascertain what their charge per mile of track for track-laying was?

A. I did not know what it was.

Q. You had the lump sum in mileage, didn't you?

A. Yes.

Q. Do you know what it divides?

A. I did not make the division at all.

Q. You didn't try to find out?

A. No.

Q. Nor didn't call on them to do that?

A. No.

Q. In your track-laying problem you did not provide anything for a material-yard, did you?

A. Well, it didn't appeal to me, Mr. Butler—

Q. I don't care what appealed to you, I am asking you if you allowed anything for a material-yard.

A. It didn't appeal to me as being a very important matter and for that reason I didn't allow one. There is no need of such a thing, under ordinary circumstances, and the fact that the Minneapolis & St Louis in putting in its estimate here has taken the Watertown material-yard as an example is not fair to the situation. The Minneapolis & St Louis built that line to the west during a period when the prices were higher than they ever had been in the history of railroad construction in this country, and those prices as applied to reproduction cost under normal conditions in the state of Minnesota are not, in my judgment, fair, and I do not think that there is any justification for putting in $20,000 or such a matter for a material-yard.

Q. Would it cost any more to lay a track from Watertown westerly than it would a like distance this side of the Minnesota western boundary?

A. It would cost more for transportation.

Q. Aside from that would it cost any more?

A. Yes, the grading would cost more if you were going to put the price in that you did in respect to track-laying and items of that kind.

Q. Would the track-laying cost any more in Dakota than it would in Minnesota?

A. It ought not to, Mr. Butler. The contract price for laying the track of the Minneapolis & St Louis on that Watertown extension, according to the vouchers in the office of the M. & St. L. offices, in the contract of Winston Brothers, not including the surfacing, was $270 a mile.

Q. That is a figure you took here, I believe?

A. Track-laying, including the surfacing, $490 per mile.

Q. That is the contractor's price?

A. That is the contractor's price.

Q. You took the contract price of Winston Brothers for $270 which did include the surfacing?

A. That was for the tracklaying. I have provided for the surfacing myself in my own estimate.

Q. And you came out at about the same place as the contract price, is that right?

A. About that, yes.

Q. But the contractor is furnished,—or does he provide, the locomotives and cars that you have taken into account in building up your $500 per mile?

A. The contracts vary in respect to that. Sometimes they do.

Q. Well, this one.

A. I couldn't say as to that.

Q. Then that particular figure that you have given us has no significance at all, because you don't know what was included in the contract?

A. I do not know what the terms of the contract were; those were the figures that appeared on the vouchers.

Q. You didn't ask for the contract?

A. I have not seen it.

Q. You didn't ask for it, did you?

A. No.

Q. That contract did not relate to any work in Minnesota, did it?

A. No, not at all.

Q. And you simply called for those vouchers to get at the cost of doing similar work in Dakota?

A. Yes; of course I got information, Mr. Butler, from all sources that I could.

Q. Yes, but this particular information you got as a basis of comparison, didn't you?

A. Not necessarily a comparison, I got it as a statement of cost as shown on the vouchers.

Q. What did you want it for? it didn't relate to Minnesota.

A. I wanted it, certainly, as a matter of information and as a guidance, in a way, but I am making up my own figures in these estimates, I am not taking what the Railroad Company—

Q. Did you call for the other items of cost of laying the Dakota track from Watertown west?

A. No, I did not.

Q. Did you call for all the items that that Company spent for track-laying and surfacing there?

A. No, I have not made any demand upon them for any of that information at all.

Q. The reason you wanted the information in respect to Dakota was because you thought that if you had that information it would shed some light upon what is reasonable to allow in Minnesota for the same thing?

A. Not in the slightest.

Q. Well, then, what did you want it for?

A. Just as a matter of information, that is all.

Q. Didn't you think it would shed some light on the value of the same—

A. Why, there is always a bearing, Mr. Butler, in work of the same character. There is always a bearing, but it does not necessarily follow that because work costs a certain sum here it can be done elsewhere for the same sum or that the sum would be more or less.

Q. But it would shed some light?

A. Why, certainly; that is where we must get all our information—from all sources.

Q. And that was the reason you wanted it?

A. Yes, I say I tried to get information from every place.

Q. Then I was right in my question when I said you called for this information because it would shed some light upon the problem you had of getting at the value of track-laying and surfacing in Minnesota; that is the reason you went into the Dakota vouchers?

A. Why, certainly, Mr. Butler, but you stated that I would take it as a unit, I understood.

Q. No, I didn't, I said shed some light on it.

A. Certainly.

Q. The conditions are similar, are they not?

A. Well, yes in a way they are.

Q. Very, very similar, aren't they, in western Minnesota and eastern Dakota?

A. Except so far as the prices are concerned for labor and materials; probably that is the substantial difference.

Q. Now, did you find out that they had a material-yard out there?

A. Why, I walked over the material-yard at Watertown, South Dakota, when they were constructing the line.

Q. Did you allow in your estimate anything for a material-yard for Minnesota?

A. No; the right-of-way will cover all the material-yard that is necessary.

Q. Did you allow for handling off of cars into a material-yard and handling out of the material-yard on to the cars?

A. Yes, that is provided for in my estimate.

Q. Where?

A. Handling material, handling of ties and rail and fastenings.

Q. That is, you can purchase ties at the source of supply and take them and put them on the track and only handle them once and a half?

A. That is what you ought to be able to do, Mr. Butler, under ordinary circumstances.

Q. Is that usually done?

A. Yes, it is; and I want to say this, that during the time that the Minneapolis & St. Louis was building a line to the west, probably at no time in the history of the country was there such straits for equipment as there was just at the time they were building that line, the railroads were very anxious and it was very necessary to unload cars. Now, that is not a normal condition and that is not a condition that I have taken as a base in my estimates at all, and that is one reason why the Minneapolis & St. Louis had to unload all its material and get rid of it to add to this expense.

Q. You know it to be a fact, don't you, Mr. Morgan, that it did handle ties three times there?

A. I do not, Mr. Butler.

Q. Instead of once and a half?

A. I do not. I know that it might be very probable that it did.

Q. But your idea is that that is not necessary, that it did unnecessary work if it did and handled them once and a half times more than it needed to?

A. I can't say that they handled them once and a half

more than they needed to, but under the circumstances under which they built that line I don't think they did. I am not in a position to criticise the Minneapolis & St. Louis, that they didn't know how to attend to their business or how to construct that line, I think they probably did as well as they could under the circumstances, but the circumstances were not a fair index.

Q. It was reported to you, wasn't it, and you know from your examination of the yard and the vouchers, that the handling of material at that yard cost that Company $130 per mile of track laid?

A. I don't know, I am sure; I don't question that the vouchers show it.

Q. That is the fact. Now, you have not included any such item, and it is a very substantial one, and you have not included it for any of the tracks anywhere, from the Canadian boundary to the Iowa boundary.

A. Or from Wisconsin to Dakota.

Q. Now, the Minneapolis & St. Louis road found, as they supposed, that it was necessary to spend that money handling material in that yard, and I ask you if you hold, as an engineer, that the expenditure for that or similar service is wholly unnecessary with respect to all these 8,000 miles of track in the state of Minnesota.

A. Yes, I think it is, Mr. Butler, entirely unnecessary; and I believe that by intelligent, careful consideration of the construction of a line of road that that expense can just as well be avoided.

Q. This track-laying problem is a matter where you differ from many of the railroads in the cost?

A. Well not so very much from some of them.

Q. Did you differ from the Northern Pacific?

A. Yes, I differed decidedly from the Northern Pacific.

Q. How much per mile for track-laying and surfacing did

you differ from the Northern Pacific?

A. I do not recall now what it is per mile, but I can give you some figures here.

Q. Well, we don't care to confuse the record with detail figures, but if you can tell what the Northern Pacific claimed for this Item 10 per mile, I would like to have you figure—

A. No. I would just simply like to answer your question as to how I stood with some of the other roads.

Q. —on the aggregate of items for track-laying and surfacing, Item No. 10 in your blank. It is very easy to get at it, you have the mileage and the total, and all you have to do is to take a similar division, get the Great Northern figure, the Northern Pacific figure, the Soo figure, per mile of track for all these items.

A. I haven't that here, Mr. Butler, but I can prepare it.

Q. Well, will you?

A. Yes.

Q. Will you prepare it with respect to each of the roads in the state?

A. Yes.

Q. Covering the same elements in each, and the very same elements that you allowed $500 for; if you can find the evidence, get that information.

A. I think I can get it for most of the lines in the state.

Q. The matter of track-laying is one of the principal differences between you and the engineers dealing with the Northern Pacific problem, isn't it?

A. It is one, yes.

Q. Ranging from $300 to $500 per mile difference in that item, isn't it?

A. Yes, I think so.

Q. They claiming about $1000 and you claiming about $500, roughly; isn't that it?

A. Yes, I think something like that. I think my average

figures on the Northern Pacific are about $520.

Q. On your Item 11 there appears to be, between you and the Minneapolis & St. Louis Company, a difference of $359,350 on bridges, trestles and culverts. I want to find out wherein that difference arises.

A. I don't think that I can analyze that difference, Mr. Butler, in detail; the report of the Minneapolis & St. Louis was made up in such a way that it was impossible to get at the unit prices. I can say this, however, that the Minneapolis & St. Louis put in the bridges in the city of Minneapolis—

Q. Well, let me—

A. —which—

Q. If you will permit me—You say you can't answer my question to tell where the difference arises because they have not given you the information.

A. I said fully; I can't give you all.

Q. Now, let us go to the matter of quantities to see if you agree—first, on the number of bridges and culverts that there are on the road, and next, with respect to the quantities of material in them. That would be a good way to come at it and see whether it is a difference between quantities,—that people can go out and look at and find out,—or whether it is a question of price.

A. I don't think there is any material difference so far as quantities are concerned.

Q. Then let us have your quantities.

A. Well, I should have to go over the details of the report, but I haven't that all out for you, I haven't that summarized. I can summarize that.

Q. I wish you would.

A. But, as I say, there are no material differences so far as the quantities are concerned, except as relating to bridges in the city of Minneapolis which the Minneapolis & St. Louis has put in.

Q. Then it is fair to say that you are in substantial accord as to quantities except in Minneapolis as to bridges?

A. Yes.

Q. All right. Now, what is the difference there as to bridges?

A. Well, I can't tell what the difference is as to bridges because the Minneapolis & St. Louis has lumped the bridges that it put in.

Q. Can't you give us the lump of the bridges that you examined there on that road?

A. I can tell you the cost of those bridges we have put in there. Here are the bridges that were turned in by the Railroad Company: There is the First street north—the entire cost of that bridge, of which they only own 33 1/3 per cent; the Second street north, 100 per cent, of which they own only 14.28 per cent; Washington avenue north, 100 per cent, of which they own only 33 1/3 per cent; Third street north, 100 per cent, of which they own but 27.27 per cent; Fourth street north, 100 per cent, of which the Minneapolis & St. Louis owns but 30 per cent; Fifth street, 100 per cent, of which the Minneapolis & St. Louis owns 33 1/3 per cent; Seventh street north, 100 per cent, in which the Minneapolis & St. Louis doesn't own anything; Holden street, 100 per cent, in which the Minneapolis & St. Louis owns but 28.57 per cent; Western avenue, 100 per cent, in which the Minneapolis & St. Louis owns but 28.57 per cent; Lyndale avenue, 100 per cent, in which the Minneapolis & St. Louis doesn't own any interest; Laurel avenue, 100 per cent, in which the Minneapolis & St. Louis doesn't own any interest. Those bridges in which the Minneapolis & St. Louis have no interest were built and paid for by the city of Minneapolis, and the proportionate ownership assigned to the Minneapolis & St. Louis relates to the width of the right-of-way owned by the Minneapolis & St. Louis as it is related to the width of

the right-of-way of other adjoining companies, assigning to each—

Q. Now, let us go slow enough for me to understand you. You say the First street north bridge they claim 100 per cent of its value?

A. Yes.

Q. And they only own 33 1/3?

A. Yes.

Q. Who owns the rest, according to your understanding?

A. The other railroads.

Q. What roads?

A. Well, there is the Great Northern and other lines. I can work that out and tell you just exactly.

Q. It is used by the Minneapolis & St. Louis, is it?

A. It is used by the Minneapolis & St. Louis, yes.

Mr. O'BRIEN: Let me understand what this is. Is this an over-head bridge?

WITNESS: These are over-head bridges, yes.

Mr. O'BRIEN: It is not used by the roads, it is used by the public?

WITNESS: It is a bridge above their tracks.

Q. Whose right-of-way is it?

A. The Minneapolis & St. Louis.

Q. The First street north is the Minneapolis & St. Louis' right-of-way?.

A. Yes.

Q. This is a bridge over it?

A. Yes.

Q. On their right-of-way?

A. Yes.

Q. And you say that some other railroad company owns two-thirds in it?

A. Yes.

Q. Now, Second street, is that in the same fix?

A. Yes, they are all in the same way, Mr. Butler, according to the percentages as shown on this statement.

Q. What evidence of ownership did you get at? Did the Minneapolis & St. Louis make these acknowledgments to you, or did you find records, or how did you get at that, do you remember?

A. Well, we got at records from the office of the city engineer in Minneapolis and from the reports of the other railroad companies as well as the Minneapolis & St. Louis.

Q. Did any of the other railroad companies claim, in their reports, interests in the same bridges?

A. Yes.

Q. In the percentages in the aggregate that you have—

A. Some of them put in the percentages that stand just about as we have finally taken them.

Q. But in each instance of these bridges that you have mentioned the Minneapolis & St. Louis owns the right-of-way and trackage under the bridges; am I right about that?

A. Under a certain part of the bridge; and then the parallel right-of-way of another company would own under that.

Q. That is, the land is owned in severalty?

A. Yes, under the bridge.

Q. But not jointly?

A. But not jointly.

Q. And you have divided on the basis of ownership under the bridge?

A. On the basis of ownership under the bridge. That would be the proportion—

Q. How much of a difference arises between you and the report of the Minneapolis & St. Louis Company on account of their claiming the total ownership of these eleven bridges instead of what they do own?

A. Well, I can't say, Mr. Butler, because the report of

the Minneapolis & St. Louis does not show these bridges separately. It reports them all and reports their ownership but in the sum total. The figures which they give—

Q. What is your total value of the eleven bridges? Have you the reports of the Minneapolis & St. Louis here?

A. Yes.

Q. Their original sheets?

A. Yes.

Q. Will you let Mr. Cutler see them? He thinks that the weight of each bridge was shown.

A. Well, that is true, the details are shown, but I am speaking now of the price. I could not tell what the price was that was put in against those bridges. Of course, we had the data, the details of structures, but so far as the prices that were attached,—

Q. They have reported separately every bolt and nut and pound of stuff?

A. Yes.

Q. And did it correctly, as far as you know?

A. Well, we had the matter up with the Minneapolis & St. Louis a good while trying to adjust that very matter of bridges.

Q. Well, did you get them adjusted as to weight and tonnage ?

A. Well, so far as it was possible to do so, yes.

Q. Let us have your original sheets that show the total weights of the bridges. I am trying to find out whether there are any differences between you and this Company with respect to the quantities and the tonnages in these bridges. They reported to you the whole bridge, you examined the whole bridge; you say they are only proportional owners,— be it so, we ought to be able to ascertain, Mr. Morgan, and I asked you yesterday to make such examination as would be needed to show us where the differences are between you to see if we cannot reconcile them.

Mr. O'BRIEN: I imagine Mr. Morgan did not understand you if that is what you have been asking for, because I certainly didn't understand it. Until this discrepancy in the ownership of bridges appeared you were asking him as to prices.

Mr. BUTLER: No, I wanted to find, first, if we agreed as to the quantities.

Mr. O'BRIEN: Your questions yesterday were directed as to prices exclusively.

WITNESS: Why, certainly, it was a question of prices you were asking me, and I told you I couldn't analyze that. I said as far as quantities were concerned—

Q. That you were in harmony?

A. I said so far as possible to get in harmony.

Q. After two or three questions you said in harmony except as to the city of Minneapolis, and then I came to the city of Minneapolis, and then you began to tell us that they claimed to own property that they didn't own, and now we want to find out what you figured those quantities to be and to see whether they are in harmony with the Minneapolis & St. Louis' return, and if they only own a half or a third we can make the division.

A. I think we are in harmony so far as the bridges are concerned, except the Seventh street north bridge, which was built entirely by the city; the Lyndale avenue bridge, which was also built by the city; and the Laurel avenue bridge, which was built by the city.

Q. Is there any difference in your determination of tonnage in those bridges and the Minneapolis & St. Louis' determination of the tonnage?

A. I think we stand substantially the same.

Q. Then there is no difference between you as to the quantities, it is all as to the ownership?

A. It is as to ownership, and, of course, those three bridges

would make a difference in the quantities if the ownership is disputed.

Q. Not in the quantities in the bridge, would it?

A. Well, it would change the whole number of bridges and it would change the whole value.

Q. If they don't own it we will leave it out. Did you find out what the First street north bridge was worth?

A. From the Minneapolis & St. Louis I could not, no. As I say,—

Q. Did you find out from anybody?

A. We made our own estimate on that.

Q. Well, what is it worth and how do you get at it? What are your quantities and what is your price per unit?

A. No, we made no computations on those bridges, Mr. Butler, because the Minneapolis & St. Louis did not own them.

Q. You have made no estimate, then, of what are the quantities in the bridge at First street north over the right-of-way of the Minneapolis & St. Louis or of the prices per unit of the quantities or the details?

A. No.

Q. In this or in any other matter?

A. No.

Q. No price of that at all, and that is because the Minneapolis & St. Louis didn't own it?

A. Yes.

Q. Did you make any estimate whatever of the reproduction cost of the bridge at Second street north over the right-of-way and tracks of this Company? I want to find out how many tons are in it, price per ton, and aggregate reproduction cost, if you computed it.

A. Well, that Second street north, 59.5 cubic yards of masonry. It is a truss.

Q. Give me the total price first.

A. $3,189.

Q. Now, let us have how you make that up. I want the total cost. We will deal with the ownership afterwards.

A. The total cost of the Second street north bridge is estimated at $22,323, of which amount the Minneapolis & St. Louis owns one-seventh, or $3,189.

Q. Now, will you give us the items and prices by which you build up this $22,323?

A. That is made up of 416.5 cubic yards of masonry at $12 a yard, and 462,000 pounds of steel, erected and complete, with deck, at 3¾ cents per pound.

Q. Is that all?

A. That is all. That takes care of the decking.

Q. Is the deck steel?

A. No, the deck is wood.

Q. Well, that is not 3¾?

A. Yes, that takes care of the whole business.

Q. Did you weigh the wood, too?

A. No, didn't weigh the wood, the price put in there is sufficient to take care of that. You see the ordinary steel here in St. Paul is around about $55 a ton.

Q. Those are the only elements that you took into account in estimating the reproduction cost of that structure?

A. We took into account all of the elements which were necessary.

Q. Yes, but that is as far as you analyzed it?

A. That is as far as we analyzed it in detail.

Q. No hauling charges or transportation or loading or handling, or anything of that sort, dealt with separately in your estimate, you just lump it at 3¼ cents a pound for the steel and say that would put on a deck, too,—was that the idea?

A The prites were regarded as being entirely liberal for that, and we find from the cost of a good many bridges that have been put up by the lines that those figures fit very nicely

with the actual cost of the structure.

Q. Yes, but what I wanted to get at was whether or not in your estimates with respect to this particular bridge you analyzed any more closely than $12 per cubic yard for masonry in place and 3¼—

A. 3¾.

Q. —3¾ cents per pound for the steel, and the deck thrown in, whether in your analysis of the problem you went any closer than that.

A. No, probably not.

Q. Well, if you did, I would like to have it. Now, were you right when you answered me a while ago that you didn't estimate the value of the First street north bridge at all? Didn't you estimate that for somebody? it was railroad property.

A. I thought that was cut out.

Q. Well, you cut it out, but I want to find out whether you didn't make a mistake when you answered me. It does not seem likely that you would overlook a bridge and not value it for anybody at all; you say the Minneapolis & St. Louis did own a third?

A. Yes, that is right, I did make a mistake in that; I thought when you spoke that that was one of the bridges that had been entirely cut out.

Q. No.

A. Yes, we did.

Q. Now, let us have the same thing about that. Is it the same price for masonry and steel?

A. The same.

Q. Well, give us the items then, so we can see if your quantities are like ours. Masonry, how many yards?

A. 417 yards.

Q. $12?

A. Yes.

Q. Steel, how many pounds?

A. 192,000.

Q. Same price?

A. Yes.

Q. That throws in the deck for nothing, too?

A. Well, that takes care of the deck.

Q. That is, you fix this price and then throw in the deck, is the way you do it, isn't it? Now, take the next bridge, which is the Washington Avenue north. You say we own a third of that?

A. Yes; 190 yards of masonry at $12.

Q. You are not giving us our proportion, are you?

A. Oh, no, I am giving you the total.

Q. 190 yards at $12?

A. Yes.

Q. Steel?

A. 468,000 pounds.

Q. 3¾?

A. Yes.

Q. Give us the Third Street bridge. The total price in yards and pounds is a better way than I have been asking you. By the way, give me the total cost of the First Street north bridge in dollars and the Washington Avenue north.

A. The First Street north bridge is $12,204.

Q. Washington Avenue north?

A. $19,827.

Q. Third Street north.

A. The Third Street north, 159½ yards of masonry.

Q. Give me the dollars first, if you can conveniently.

A. You want the total cost of the bridges?

Q. Yes.

A. The total cost $46,827.

Q. Now the items.

A. 159½ yards of masonry at $12 and 1,283,326 pounds of steel.

Q. Do you have the value of these bridges and the items in yards and pounds in separate sheets or statements?

A. I think we have this all in more detail up at the office, so as to save working it out.

Q. Well, let us go on, we are making some progress, probably,—Fourth Street.

A. Fourth Street North?

Q. Total price.

A. Total price $48,586; 160 yards of masonry at $12, and 1,333,333 pounds of steel.

Q. Fifth Street.

A. Total cost $42,492; masonry 321 cubic yards at $12; 1,104,000 pounds of steel.

Q. Seventh street.

A. The Seventh street bridge was cut out, we have no figures on that.

Q. No railroad is interested in that?

A. No.

Q. Your idea is the city owns that and therefore you left out the Seventh street bridge?

A. Yes.

Q. Are the tracks of more companies than the Minneapolis & St. Louis under that bridge? That is an over-head street bridge, is it?

A. That is an over-head street bridge, yes.

Q. Are there tracks of more than one company under that?

A. Yes, I think so.

Q. The city built it and maintains it, you understand?

A. Yes.

Q. Holden street bridge?

A. $10,573.

Q. Yardage?

A. 28 yards of masonry at $12.

Q. Steel?

A. Concreté, 385 yards at $7.50 a yard, and 210,000 pounds of steel.

Q. Price?

A. 3½ cents.

Q. That differs from the others, does it?

A. That is 3½ cents on Third street north, Fourth street north and—

Q. On the Third street bridge your price is 3½ cents for steel?

A. Third street north 3½, Fourth street 3½, Fifth street 3½, Holden street 3½.

Q. The rest are 3¾?

A. Yes.

Q. Western avenue?

A. $24,500; the masonry is 280 yards at $12; 532 yards of concrete at $7.50, and 490,000 pounds of steel at 3½ cents.

Q. Lyndale avenue and Laurel avenue bridges you claim to be owned by the city?

A. Yes.

Q. Did you make any estimate for any purpose whatever of the value of those bridges?

A. No, I did not.

Q. Are there tracks other than the tracks of the Minneapolis & St. Louis Company under them or either of them?

A. Well now, I can't say, off-hand, as to that, I will look that up.

Q. Did any other railroad company claim the bridges or any interest in them?

A. Not that I recall.

Q. Did any other railroad company claim the Seventh street bridge or any interest in it?

A. I will have to look up the records on that; I wouldn't want to answer that off-hand.

Q. Is there any difference in the amount of masonry or

number of pounds of steel or yards of concrete claimed in any of these bridges by the Minneapolis & St. Louis and your estimate, and if so, what are the differences, and give their claims in detail, commencing with the bridge on First street north and let us see if there is any difference in quantity.

A. There is no difference so far as First avenue north is concerned.

Q. Either in the masonry or the steel?

A. Either in the masonry or in the steel.

Q. Now, the Second street north.

A. There is a difference so far as Second street north is concerned in the weight of the steel.

Q. What is the number of pounds claimed by the Company?

A. 238,000 pounds.

Q. And you have it 46,000?

A. That is the total weight of the bridge. 238,000 in the report of the Minneapolis & St. Louis, and we find that the total weight of the steel in that bridge is 462,000 pounds.

Q. You gave me the amount of steel in that bridge as 46,000 pounds at 3¾ cents per pound?

A. No, it should be 462,000 pounds.

Q. What is the weight they claim for the steel in that bridge?

A. 66,000 pounds.

Q. And you give 462,000?

A. I think you misunderstand.

Q. Just wait a minute and I will tell you what I do understand. I understand that this Second street north bridge is estimated by you to cost $22,323, 416.5 cubic yards of masonry, at $12 per cubic yard, and now, a moment ago, I understood you to say 462,000 pounds of steel at 3¾ cents per pounds. Now, that is what I understand your estimate to be.

A. That is right.

Q. Now, I want to find out what their estimate is as to yards of masonry, first.

A. Their estimate of the yards of masonry is the same as mine.

Q. Check. Now, I want to find out their estimate as to the pounds of steel.

A. 238,000.

Q. Even.

A. Yes.

Q. Your estimate, therefore, is 224,000 pounds of steel more than theirs?

A. Yes.

Q. In the whole bridge?

A. Yes.

Q. In other respects you are agreed as to that bridge?

A. Yes.

Q. Their return did not show the unit price for the masonry or for the steel, as I gather from you.

A. No.

Q. Or the total price of the bridge?

A. No.

Q. Did your blanks call for the total price of the bridge?

A. They were put in by the other roads.

Q. Well, did your blanks call for them?

A. They did.

Q. And for the unit price of the masonry?

A. Yes, that was all shown on Form 50 by the different roads.

Q. But not on the detail forms?

A. Well, some did on the detail form.

Q. Well, did the detail forms call for it?

A. No, they did not.

Q. Form 50 is a summary form?

A. Form 50 is a summary form.

Q. A general price-list form?

A. Well, for summarizing the details.

Q. Well, now, let us take up the next bridge. I will tell you some of the things I would like to have done: First, with reference to the difference on right-of-way and terminals. That is, as I understand it, by the testimony of Mr. Morgan, all located at the city of Minneapolis. As far as practicable, I would like to have it shown in detail, by divisions, where their prices and amounts differ.

A. Do you mean in Minneapolis alone?

Q. In Minneapolis; from the information on file in Mr. Morgan's office. The same with respect to cross-ties and switches. I want to find out what difference there is in the number of ties, in the quality of ties and in the price-list of ties and where on the road the differences arise. If it be a difference of count, they may be counted again, if necessary, to find out how many are in the track. Track-laying—I think we have Mr. Morgan's elements this morning by cross-examination. Bridges and trestles—we understand that this difference is all confined to Minneapolis by the testimony of Mr. Morgan this morning. I would like to have made the kind of comparison that we have been making this morning, a comparison of quantities in each bridge in controversy. With respect to equipment in Items 32, 33, 34 and 35, unless it is already shown on Exhibit 31 (and I think it is not complete) I would like to have shown the percentages of equipage, the mileage that is used for the apportionment and ascertain whether there is any difference in the total number of locomotives, the total number of passenger equipment, the total number of freight cars or in the total amount of miscellaneous equipment, or in the prices per unit of each, and whether the difference arises from the difference of percentage in the distribution between Minnesota and the other states or in any difference of prices of the articles or in the number of articles.

The MASTER: Has this exhibit been formally offered in evidence?

Mr. BUTLER: It is offered now

Adjourned.

FEDERAL BUILDING, St. Paul, Minn., Thursday March 11, 1909, the hearing was resumed at 10 A. M.

DWIGHT C. MORGAN,
recalled for further cross-examination, testified.

By Mr. BUTLER:

Q. Mr. Morgan, referring again to Ex. 31, offered in evidence at the last hearing, can you now give us more information than you did give us on the last hearing as respects the details of difference on Item 11, bridges, trestles and culverts, which is stated on this exhibit to be $352,350? That is the difference between the Company's valuation June 30, 1907 and your valuation of that date.

A. Yes, I think I can.

Q. Just state it into the record, in your own way, Mr. Morgan, so as to make it as clear as possible. I understood from you, in conference, that you wanted to make some correction, first, as to your statement that all of the difference on this item existed as to Minneapolis, and next as to the claim of the Company as to ownership of the overhead highway bridges to which you referred; perhaps you had better straighten that out, to start with.

A. I don't think that I stated that all of the difference was due to the situation in Minneapolis. I knew that some of it was, but if I stated in my testimony that it was all due, I didn't intend so to state, because I knew that it was not. In my cross-examination before, I think I made the statement that the Minneapolis & St. Louis had put in the full value of all of the overhead bridges in Minneapolis, which was a mistake on my part, because they had not; they had, however, put in three bridges in Minneapolis, that we excluded in our estimate for the reason that these bridges were erected and paid for by the city of Minneapolis.

Q. Well, is there any difference between you now as to

ownership of the bridges in question except those three that you say were built by Minneapolis?

A. No, there is no difference so far as ownership.

Q. You allow the Company the proportion of each bridge that it claims itself?

A. Yes.

Q. Now, while we are on that subject, the Company claimed for three other bridges that went over its tracks alone?

A. Yes; they claimed a total of $54,580 as their proportion of these three bridges.

Q. Built by the city?

A. Built by the city.

Q. And you have excluded that.

A. And then, in addition to that, there is an error in the returns of the Minneapolis & St. Louis.

Q. Well, before we leave that city bridge matter, your idea about that was that, the city having built the bridges that are there, in case of reproduction, the city would build them again?

A. Well, I didn't consider them at all, Mr. Butler, so far as related to the railroads was concerned; they are there, they are owned by the city and they were paid for by the city, and, if we were to reproduce the railroads, why I assume that that burden would not fall upon the railroads.

Q. Now, there has been, recently, a different view of the law expressed as respects such matters than that which was the common understanding heretofore. As I understand it, until the Supreme Court of the United States recently decided to the contrary, it was assumed that a railroad company having a line before the existence of any highway would not be obliged to construct an overhead bridge in a highway that was opened up after the railroad was laid out, and that was probably the case over here, or do you know which was there first, the highway or the railroad?

A. Well, I couldn't say as to that Mr. Butler, nor do I know as to the time of the decision, whether it was prior to or after the date of June 30, 1907, but I suppose perhaps something in respect to the retroaction of the law might have some effect; I don't know anything about that at all.

Q. Your conception is this, as I understand it, you assumed, in making your reproduction cost, the present development of the city of Minneapolis and conceived the railroad to be eliminated from its right-of-way and the ownership of the right-of-way also to be eliminated?

A. Of the Minneapolis & St. Louis, yes.

Q. On that assumption, if the Company were to acquire a right-of-way through these streets now and obliged to build these bridges, it would be a proper charge as a part of the reproduction, wouldn't it?

A. Well, I presume that that would be so, I don't know; there might be some special conditions, perhaps, that would modify that.

Q. That makes it important to know how much, if at all, your valuation is different from the Minneapolis & St. Louis' as respects these three bridges, and the Court will determine whether or not we ought to be allowed anything, and if it determines we ought, we will take the figures of one or the other of you, probably.

Mr. O'BRIEN: We object to this as immaterial, upon the ground that, under no theory of the law which has yet been stated by any court, would the Railroad Company be allowed to capitalize and earn a return upon the property of the city of Minneapolis.

Mr. BUTLER: No, but we are talking about reproduction cost, and that is what Mr. Morgan has been figuring on all these years.

Mr. O'BRIEN: Well, of course, if the cost of reproduction is used for any other purpose than to ascertain the present value

of the present property which the Company owns, it is an absurdity. It was a method suggested by the Court for the purpose of ascertaining what the present property held by a company is worth, what it would cost to reproduce it. It is not a matter of what it would cost, it is not now a question of what it would cost to reproduce the property in the city of Minneapolis or the witness' private property but the property of the Minneapolis & St. Louis road, and those bridges, not being a part of their property, the cost of its reproduction must be immaterial.

Mr. BUTLER: Well, the Court might be of opinion that, if Mr. Morgan's conception, as stated in his letter of instructions to the Railroad Company were right, the law would require them to build these bridges, when all the facts are in, and if so it would be a part of the reproduction cost, I take it, of the property, because they could not maintain their road without.

Mr. O'BRIEN: Yes, of course, if the Court is looking for an opportunity to ascertain whether it is possible to construe the language of a public officer at one time in such a manner that we can eventually arrive at an absurdity which would prevent the fixing of rates, I concede that to be true, but if we are trying to ascertain now what the property of the Minneapolis & St. Louis road is worth, it is not true.

The MASTER: Objection noted. The witness will answer.

A. The difference brought about in the estimate of the overhead bridges in Minneapolis, due to the three bridges which were included in the report of the Minneapolis & St. Louis and excluded in my report, is $54,580.

Q. Now, if you will go on, in your own way, Mr. Morgan, and specify the other items of difference so as to make a narrative statement of them, I would be obliged to you.

A. Now, then, in the remaining bridges in which the Minneapolis & St. Louis and myself agree so far as the number of bridges is concerned, there is, in the quantities—

Q. And ownership?

A. Yes, and ownership; there is, in the quantities returned by the Minneapolis & St. Louis, an error in the quantities of masonry and steel which, at their unit prices, amounts to $23,000.

Q. What bridge is that, where is it? so we can locate it and look it up.

A. I haven't that separated here but I will give it to you.

Q. Go on.

A. Now, in the wooden overhead highway bridges outside of Minneapolis, in the data returned to the State we do not get the same results that the Minneapolis & St. Louis does in the exhibit furnished by Mr. Cutler.

Q. Exhibit—?

A. Exhibit 30; and that difference is due to some matters which I think Mr. Cutler can explain better than I can. The difference, however, is $41,570, and there is not a thing appearing in the report of the Minneapolis & St. Louis, nor are there any evidences on the ground, for those charges, and if they be included at all we should assume that they would be covered under the head of contingencies rather than any place else. Now, on the steel track bridges, on the system in Minnesota, there is a difference of $69,697, and that is made up partly in unit prices and partly in a charge for false-work, which the Minneapolis & St. Louis has put in that we have not put in in our report. On the pile and timber bridges there is a difference of $102,266, which is due to a difference in the unit prices applied.

Q. Wholly?

A. Yes, you might say wholly.

Q. What prices are they? Have you the figures before you so you can give us?

A. Yes. The Minneapolis & St. Louis put their pile bridges in at $13, $14.50, and $16 per lineal foot, and their timber bridges in at $45 per thousand feet board measure, in place,

their piling at 70 cents per foot. We have used, in my estimate, $10.50 a running foot for both the pile and timber bridges, and our piling is in at about 47 to 48 cents a lineal foot. I have analyzed the report of the Minneapolis & St. Louis in two ways, taking the exact quantities of timber in the timber structures and the unit prices which apply to that class of material, and the result is that I come out at practically the same place that I do in applying the average price. In other words, taking the details and working them out, I get for all bridges on the Minneapolis & St. Louis, $10.53 a running foot, and I have allowed $10.50 a running foot. Now, there is this point to be taken into account, that about 66 2/3 per cent of the pile bridges on the Minneapolis & St. Louis are four piles to the bent. We have allowed $10.50 a running foot, and yet the details of our computations as to the cost of constructing a bridge with four piles per bent amounts to $9.04, and, with five piles per bent, to $10.23; so that considering that such a large percentage of their bridges is only four-pile bent bridges, the $10.50 per lineal foot appears to be a very liberal and fair figure and seems to work out to substantially the same thing when we take and analyze the details for all of their bridges, both for pile bridges and timber bridges.

Q. Can you tell us how your $10.50 per foot is made up?

A. Yes, sir.

Q. I wish you would do that, so we can compare it with the opinions of others as to the details. First, as to the pile bridges and then as to the timber bridges, and, if there be any difference as to the five-bent and four-bent bridges, specify the analysis of each.

A. Well, as a basis to work on, we took a typical pile bridge 111 feet long.

Q. Why 111 feet?

A. Well, that is the length that we decided on as being a fair average to take for pile bridges for the state as a whole.

Q. And for the Minneapolis & St. Louis?

A. Yes, it would apply, I think, pretty well to the Minneapolis & St. Louis. The bridges might average a little shorter on the Minneapolis & St. Louis, but when we analyze our figures and get considerably lower than we have allowed here, of course it compensates for the fact that the bridges, some of them may be shorter or may average shorter.

Q. Well, assuming it to be 111 feet long, then what?

A. Well, we had thirty-six piles of different lengths. Do you want every detail of this, Mr. Butler? How would it do now for me instead of attempting to read this into the record to furnish you a statement which will give you every detail of it?

Q. That would be better.

A. Give you every detail of it.

Q. What I want to get at is how you get the $10.50. Now, I am not going to ask you anything about justifying it at all, I want to see whether we agree in the price.

A. I would be very glad to furnish a detailed statement that would show just exactly every detail.

Mr. O'BRIEN: Oh, you better put it into the record as you are doing, read it into the record as you are doing.

A. Thirty-six piles of varying lengths, an average haul of ten miles, the total cost of hauling the piles and delivering them on the ground $10.64 per lineal foot.

Q. That is just for the hauling?

A. That is just the hauling of the timbers. Now, we had 14,150 board-measure feet of timber of Washington fir, that varied from $15 to $18 per thousand, amounting to $244.19.

Q. What price did you figure it at?

A. Well, we figured it at those varying prices. For example,—

Q. We would have to know how much of each.

A. Well, we had bridge ties, guard-rails, cross-bracing and

dump plank, 5,216 feet, at $17; caps, 1,764 feet, at $15 per thousand; stringers, 7,170 lineal feet, at $18 per thousand, making a total of 14,150 lineal feet at a total cost of $244.19. Now, that was the price of the lumber in Washington. We added to that the freight.

Q. How much?

A. Forty cents a cwt. delivered in Minnesota.

Q. How many hundred weight?

A. We have 156 cwt. that weighed 3,000 pounds per thousand feet at $62.40.

Q. 156,000 did you mean?

A. 156 hundred weight. We had 295 hundred weight at 3,300 pounds per thousand feet board measure, making a total of $180.40 freight. Our piling was twenty-five cents per lineal foot delivered in Minnesota.

Q. At the place ten miles away where you would have to begin to haul it?

A. Yes. The driving of the piles alone was put in at thirteen cents per foot.

Q. Driven?

A. Of pile measured in the lead.

Q. That is, the whole pile?

A. That is the whole pile.

Q. It didn't make any difference how far it was driven, that would be the length of pile?

A. That would be the length of pile, thirteen cents; that means just the handling of the pile by the pile-driver crew. Now, if we add to that the hauling charge of the pile, it amounts to $23.64 per lineal foot of pile.

Q. And how long did you consider the piles?

A. Well, they varied in length. Of course, in a bridge ordinarily the piles do vary in length.

Q. I mean in this type, of 111 feet long. Where you get at your price per lineal foot of bridge, the length of the piles in

the aggregate would be very important to determine what it would cost to drive them?

A. Yes; well, that is what we have taken, the length of piles in the aggregate, which amounts to 756 lineal feet of piles. Now, the hardware, which amounts to 1601 pounds, at three cents a pound, at—well, our hardware varied from one and three-fourths cents per pound for the cast washers to three and one-half cents a pound for the bolts and line-spikes and items of that kind.

Q. Is it necessary to give the quantities of each?

A. Well, I don't think so, Mr. Butler. I can give you the total pounds here.

Q. That will do.

A. There are 1601 pounds, at a total cost of $49.17. The hauling and placing of the 14,150 (board measure) feet of timber was put in at $11.50 a thousand feet.

Q. Have you passed to the timber bridge now?

A. That is the pile bridge; it is all in the pile bridge. Now, summing all of those items together, we get a total of $1,004.29 which, divided by the length of the bridge, gives us $9.04 per lineal foot.

Q. Did you include anything for framing?

A. The hauling and placing takes the framing into account at $11.50.

Q. By framing is meant cutting the mortices and sawing, etc?

A. Yes, that is right; and the actual framing of the timber I might say is put in at $5 in itself; that is just the framing work. But that item is usually taken by contract, in this way, that the contractor agrees to haul and place his timber for so much, and that hauling and placing takes into account all of the carpenter labor.

Q. See if I understand,—how much did you include for the hauling and framing?

A. $5 for the framing of the timber and $6.50 for the hauling; that makes $11.50.

Q. For an average ten-mile haul, including the framing and putting in place of the timber?

A. That is right. Now, as I say, the Minneapolis & St. Louis has 66 2/3 of its pile bridges of this particular type, which we find to cost, on this basis, $9.04, and which we have allowed in our estimate on the basis of $10.50 per lineal foot.

Q. Now, as respects pile bridges, are you satisfied that the statement you have just made in the record is sufficient for other engineers to go by to test the correctness of your detail prices?

A. Why, I think it should be, Mr. Butler, but if there is anything that has been omitted, that anybody wants to go over this in detail, I would be very glad to furnish them any additional figures that I have.

Q. Now, will you make the same statement as respects timber bridges?

A. I haven't made any detail analysis of timber bridges.

Q. What is the difference between a timber and a pile bridge?

A. Well, a timber bridge is one that has a frame bent; sometimes that frame bent is placed upon piles and sometimes it is placed upon mud-sills, that is, blocks resting in the earth, just blocked up with transverse blocks.

Q. And you carry the same price?

A. Carry the same price through on that class of bridges; and it seems to work out very satisfactorily so far as some of the very important railroads in the state are concerned, because the prices that we get on bridges as a whole are in excess of those figures that have been turned in by those companies such as the Northwestern and the Milwaukee and Omaha.

Q. Give me the rule: would it increase or decrease the cost per lineal foot if the length of the bridge were shortened or decreased?

A. It would make some difference.

Q. Which way? the shorter the bridge the higher the price per foot, or the converse of that?

A. Well, that would be true, the shorter the bridge there would be more cost attached to it than there would if you had a large job to do, and, therefore, when we take an average proposition, we try to get what is fair to cover the situation as an average.

Q. If you have finished with that item you can pass on to the further differences you have found as respects this Item 11.

A. Now, with respect to culvert masonry, there is only a difference there of $858 out of a total of $102,000; I don't suppose you want to go into that.

Q. That is negligible, I think.

A. The next item is that of cast-iron pipe. The Minneapolis & St. Louis has turned in $61,028.

Q. There is no difference in quantities or weight of the pipe?

A. I can't say as to the weight of the pipe. I know that we have used extra heavy pipe in our estimates, and those weights are much in excess I find of the weights turned in and actually employed by some of the other companies in making up their estimates.

Q. Well, give us the prices that you have allowed for the pipe in place, or, in greater detail, if that be necessary to the problem.

A. Yes, I have them. The difference in reference to cast-iron pipe is $28,746. The cast-iron pipe comes in different diameters, from twelve inches (and even less than that) up to forty-eight inches, and even sixty inches in diameter; and we have reduced this to a cost per lineal foot, for the pipe in place, assuming that the pipe can be delivered in Minnesota for $29 a ton and allowing $10 a ton for placing it; that not including the masonry under walls, which is treated separately and as an additional item. On the twenty-four inch pipe we are using

$3.48 a lineal foot.

Q. For the pipe in place?

A. For the pipe in place.

Q. Under the dump?

A. Under the dump.

Q. And that includes building the foundations for the ends of the pipes too?

A. There are no foundations.

Q. Or the masonry around the end.

A. That does not include the masonry around the ends, this is just the pipe in place. For the thirty-inch pipe, $5.05; for the thirty-six inch pipe, $6.82; for the forty-two inch pipe, $8.98; and for the forty-eight inch pipe, $11.65. In making its report, the Minneapolis & St. Louis has turned in, for the twenty-four inch pipe, $7 per lineal foot as against our $3.48; for the thirty-inch pipe, $8.50 per lineal foot as against our $5.05; for the thirty-six inch pipe, $11 per foot as against our $6.82; and for the forty-eight-inch pipe, $17 against our $11.65. Now, I have made some comparisons with some of the principal roads which use a great deal of cast-iron pipe in Minnesota and, in fact, all over their systems, and they comprise the Milwaukee & St. Paul, the Omaha, the Chicago & Northwestern, the Chicago Great Western and the Minneapolis, St. Paul & Sault Ste. Marie. For twenty-four inch pipe the average of those lines is $3.22 a lineal foot, in place, as against $3.48 our figures. For the thirty-inch pipe, $4.39 a lineal foot, as against $5.05 that we use; for the thirty-six inch pipe, $6.23 as against $6.83 that we use; for the forty-two-inch pipe, $7.92 as against $8.98 which we use; for the forty-eight-inch pipe, $10.01 as against $11.65 which we use.

Q. Which were you comparing with that time?

A. The Chicago, Milwaukee & St. Paul, Chicago, St. Paul, Minneapolis & Omaha, Chicago & Northwestern, Chicago Great Western and the Soo.

Q. Averaged?

A. Averaged.

Q. Did you get unit prices from the other roads?

A. Yes.

Q. Why didn't you put them in the average?

A. No. From the other roads?

Q. If there was any virtue in averaging, why didn't you get them all?

A. Those were the only roads that I could get averages on; I took all I could get the averages on.

Q. Didn't the Northern Pacific furnish a price-list?

A. No, sir; I never have known those to be a certain grade.

Q. The Great Northern?

A. No, sir.

Q. Mesaba?

A. No, sir.

Q. Did you call for that from all of them?

A. I didn't ask for their unit prices at all. They didn't show it in their reports.

The MASTER: Did you get these from the reports that you have recited here?

WITNESS: Yes, these are from the reports that they have submitted.

Q. Now, did you tell me that there was or was not any difference in quantities between you and the Minneapolis & St. Louis on pipe?

A. Well, now, I can't say, Mr. Butler, definitely.

Q. Well, they gave you the price and the amount for each kind, didn't they?

A. They gave me the size and the total length of the cast-iron culverts on their system.

Q. They had different prices for different sizes?

A. They did not show, in detail, at all, in respect to what prices their pipes were put in at, and I never knew until I took

this exhibit of Mr. Cutler's; and these figures which I have produced here are taken from the prices which Mr. Cutler gave me.

Q. You had the quantities, didn't you?

A. I had, as I say, the size of the pipe and the length of the pipe.

Q. That is the only way?

A. Well, that is true to this extent, there is a difference also in the weight of cast-iron pipe. Now, let me show you: you take the twenty-four-inch cast-iron pipe, we have allowed 200 pounds per lineal foot for that class of pipe, and yet the standard on the Northern Pacific is 156 pounds.

Q. How many weights are there?

A. There are several weights of cast-iron pipe.

Q. Maybe that might reconcile some of these glaring discrepancies.

A. I don't think it will, Mr. Butler, because our figures represent the heavy class of pipe.

Q. Well, is it the heaviest?

A. No, I don't know it is the heaviest but it will sustain a pressure of, I think, 200 pounds.

Q. I have no doubt of its fitness, that you think so, but I would like to get the kinds of pipe that there are, if you could give us.

A. There are tables prepared to show that, Mr. Butler, the standard pipe dimensions.

Q. You can't give us that now?

A. No, but I know this from my figures here, I know that our figures are heavier than the Northern Pacific's, twenty-five or thirty per cent, and I know that they are from twenty to twenty-five per cent heavier than the weights of the Omaha Company, but we have used that as a standard.

Q. Well, will you go on and further define the differences that you—

A. Well, there is some difference ($3,000) on vitrified pipe, and that is due entirely to the price.

Q. What are the differences in prices?

A. Well, I don't know what the Minneapolis & St. Louis prices are on that.

Q. Higher than yours?

A. Our price for the twelve-inch vitrified pipe is 35 cents per foot in place; for the eighteen-inch, 60 cents per foot in place, and for the twenty-four inch, $1.25 per foot in place.

Q. Is that all that there would be likely to be?

A. I don't know whether the Minneapolis & St. Louis has any larger than that or not, I haven't looked that up in detail.

Q. Is there anything further?

A. There is a difference in the wooden box culverts.

Q. How much?

A. Well, that amounts to $6,700.

Q. Does that arise on the prices of lumber in place?

A. Yes.

Q. What is your figure on that?

A. Our figure on that is $32 a thousand in place. I don't know what the Minneapolis & St. Louis has used on that.

Q. And that covers the hauling and everything?

A. Yes, that covers everything.

Q. Is there any further difference between you that you can define?

A. I don't think of any other differences; I think we have covered them all, so far as bridges are concerned.

Q. Did you make an analysis showing the details in locating this on the divisions—that matter you showed me yesterday, did you bring that down, that long thing?

A. That detailed sheet? Yes, I have got that.

Q. May we have that?

A. Yes.

Q. This memorandum, as I read it, divides the subject into

steel bridges, steel over highway bridges, wood over highway bridges, pile bridges and timber trestles, culvert masonry, cast-iron pipe, vitrified pipe, wooden box culverts and brick sewers and then divides territorially as to the divisions,—No. 1 of that road is the city of Minneapolis, No. 2 is the Albert Lea division,—

A. Yes.

Q. No. 3 is—?

A. That is the Morton division, I think.

Q. Is that called the Western division?

A. Western division.

Q. No. 4?

A. That is the Pacific division.

Q. No. 5? The Southwestern, isn't it?

A. Yes.

Q. No. 6?

A. That is the Southern.

Q. And it shows the quantities and reproduction cost reported by the Railroad?

A. Yes.

Q. As far as the details are shown?

A. Yes.

Q. And also the quantities and reproduction cost reported by you?

A. Yes.

Q. As to each one?

A. Yes.

Q. Now, that is all there is to it, isn't it?

A. Yes.

Q. There was some substantial difference shown on this Ex. 31 as respects ties, which you spoke of when you were last on the witness stand. Have you located the place where the difference in the number of ties comes in?

A. Why, the difference comes in practically all in the city of Minneapolis.

Q. Have you the figures before you so you can state what the difference in number is?

A. Yes, there is a difference of about 32,000 ties in Minneapolis.

Q. These ties that appear to be divided into different kinds of ties, cross-ties and switch-ties,—in the first place, are these all cross-ties?

A. These are cross-ties alone.

Q. They are again divided into oak and cedar?

A. Yes.

Q. Do you know how many of each?

A. Our plan has been this, Mr. Butler, right straight through, in this appraisal, that where we have found a difference in the number of ties we never have reduced the number of oak ties but we have always taken the difference out of the ties of lesser value.

Q. So the error, if any, would be favorable to the Railroad Company?

A. Yes.

Q. Because the cedar ties and the other ties are not worth as much as the oak ties?

A. Yes.

Q. And if your count was short of the Railroad's you took the lower-price tie.

A. We took the lower-price tie out.

Q. That is, assumed it was that without regard to the fact?

A. That is right.

Q. Now, give me your appraisal of ties again, at Minneapolis, or whatever place you used it; I think you gave us that the other day.

A. Yes, our oak ties were put in at 70 cents and the cedar ties at 60 cents.

Q. That means where?

A. That means at St. Paul, Minneapolis or the Minnesota

Transfer; and the freight charges have been added to that.

Q. The freight charges from there to the place where they are in the track?

A. Yes.

Q. With an average distance of some sort arrived at?

A. Yes.

Q. Taking into account the number of ties, the difference in number and the difference in prices indicated by this Ex. 30—Cutler, which is in evidence, does that explain all the difference there is here?

A. Why, I think it does. We have forty counts of ties in Minneapolis yards.

Q. Assuming your count to be right without going into the details of it and this difference you have specified of 32,000 and then the difference of price, does that account for the difference under Item 5 on Ex. 31, $203,000?

A. It accounts for a good deal of it, and yet there is a difference of about $5,900 on switch-ties on the whole M. & St. L. railroad. How much of that is in Minneapolis I haven't figured out.

Q. It doesn't make any difference. Is there a difference in the prices of switch-ties?

A. A difference in prices, yes.

Q. And what is your price of switch-ties?

A. Our oak ties were put in at $28 a thousand and the other kinds at $22 a thousand.

Q. Per thousand feet, board measure?

A. Yes.

Q. I think you gave your complete analysis of the cost of track-laying when you were on the stand the other day. Nothing has occurred to you that has been omitted from that?

A. Well, I don't know that anything has occurred to me, Mr. Butler. I made some figures on that since I last went into it.

Q. What I want to find out is whether or not you stated all of the elements you included to make up the $500,—which were, "contract price $270"—I want to be sure that I understood you, that is all—

A. Yes.

Q. —"contract price, $270, one switch,"—that is the putting in of one switch per mile, on the average $25?

A. Yes.

Q. "Surfacing, fifteen laborers, at $1.75 a day, and one foreman at $2 per day, per mile of track, $28.25?"

A. Correct.

Q. "Handling material, 105 tons of rail at 11 cents per ton for two handlings $23.14; 10.2 tons of fastenings, $2.24,"—that is the handling for the fastenings, is it, Mr. Morgan?

A. Yes.

Q. "2800 cross-ties,"—how many handlings? I haven't that here.

A. $41.97.

Q. We called that $42, and I want to get what it covered. This is handling, is it?

A. Yes; well, it is all handled once, and fifty per cent of it is handled twice, making a total of $42.

Q. One-half would be a cent per tie for each handling?

A. Yes.

Q. That would be $28 for handling once, and $14 for half of once, would be $42?

A. That is right.

Q. That involves a track machine?

A. Yes.

Q. Then, "construction-train service, $9.77"—per mile of track?

A. Oh, no, construction-train service amounts to $30.67.

Q. Well, I got the crew there then?

A. Yes, that was the crew that you got.

Q. Let us analyze the crew.

A. The traincrew is $9.77 and the enginecrew $6.85.

Q. "Three tons of coal, $10.50"?

A. Yes.

Q. 4000 gallons of water is $1, waste and oil is 80 cents, and a watchman is $1.75?

A. Yes.

Q. Making $30.67 in the aggregate, per mile for train service?

A. That is for the crew, that is with the track-laying machine. Now, in addition to that, you have the crew that is with the material-yard supplying the material.

Q. I am right about this construction-train service as $30.67 per mile of track?

A. You are not right in regard to the number of engines and crews that we have, because we have two, making a total of $61.34.

Q. One is a hauling crew and the other the construction crew?

A. That is right.

Q. Then the equipment involved was 63 cars?

A. Yes.

Q. Cost $30,936?

A. Yes.

Q. Annual depreciation seven per cent, and reduced to days is $5.93 per mile of track?

A. That is right.

Q. Or per day?

A. That is right.

Q. And the depreciation on the engines per mile of track is $3.42?

A. Yes.

Q. You have repairs to cars, what is the unit there?

A. 63 cars at 20.15 cents each per day, $12.69.

Q. Per mile of track?

A. Per mile of track.

Q. Engine repairs $5,95 each (two) being $11.90, making $485.88 as the sum of your elements for laying and surfacing a mile of track?

A. Yes, laying and surfacing in the sense of a construction surface.

Q. That is not a surface that you could use the road on?

A. Well, if you are going to ballast the line, Mr. Butler, there isn't any necessity for going to that additional expense. If you are not going to ballast a line, there is, and that has been covered under the head of adaptation and solidification of road as made up in my estimate.

Q. Let us see about that. How much would it cost to surface the track, no matter what it is included in, if it wasn't to be immediately ballasted but was to be used as railroads generally use their tracks for a time, sometimes many years, without ballasting at all?

A. I should say that on a line that wasn't ballasted, it would probably cost $175 a mile to surface it.

Q. Well, now, did you include $175 a mile for surfacing in your adaptation and solidification?

A. Well, as I stated, Mr. Butler, I didn't make any attempt to analyze or work that out in detail, but, as I stated, that item would cover a number of things and this is one of them.

Q. The original surfacing of the track?

A. The original surfacing of the track.

Q. But not the original ballasting?

A. Well,—

Q. Solidification and adaptation does not include the original ballasting?

A. It includes the surfacing of the ballasting, because it doesn't make any difference, you put your ballast on and you have got to take care of that just the same.

Q. Well, in your analysis of the matter you met the same item of surfacing and included that with track-laying, didn't you?

A. Yes.

Q. But what I am trying to get at is whether or not you included it again in adaptation and solidification of roadbed; I don't understand why you put surfacing some place else if you put it in adaptation and solidification.

A. Well, that surfacing, as I have explained several times, is purely and simply the amount of surfacing that is necessary to do to put the road in suitable condition for construction operation to handle material over it if it is building to points beyond.

Q. That is, this $500, then, doesn't put the road in shape for use, but just in shape for ballasting?

A. It puts it in shape for ballasting.

Q. There is much of the Minneapolis & St. Louis that is not ballasted yet, isn't there?

A. Well, there isn't much of it in Minnesota that is not ballasted.

Q. There are a great many miles of road in Minnesota of different companies that never have seen any ballast at all?

A. Well, yes, that is true, and they have put their figures in at even less than I have.

Q. I wasn't asking about their figures, I am trying to get at this: I am trying to find out what you include in this $500, whether that means a track you can use, such as is commonly used without ballasting, or whether it means one that can't be used until it is ballasted.

A. Well, I never have assumed that $500 puts the track in condition to use in the sense that it is used to-day.

Mr. O'BRIEN: That is, for a commercial road?

WITNESS: For a commercial road.

Q. That is the way I understood it, but I wanted to have it

so distinctly appear on the record. And it would cost about $175 more, in your judgment, to surface it as commercial roads are usually surfaced when not ballasted?

A. Yes, I think that would just about cover it, a fair price for it.

Q. And by that you mean filling in the ties—

A. Yes.

Q. —by the surface that you find along the side?

A. Yes.

Q. By the substance, material, whatever it is, which is usually not ballasting material but generally is the natural soil or sand?

A. Natural soil. Sometimes that natural soil is a good ballast and sometimes it is nothing but dirt.

Q. Unfortunately, as a rule have to haul ballast most of the time to most of the places?

A. Yes, that is true.

Mr. BUTLER: Now, I think that is all I desire to ask Mr. Morgan, although I may want to examine him as to his real estate valuation. I am having some examination made of the data that were referred to at the time these exhibits were offered in evidence, that is, these sectional maps and his statistics with respect to each, but it will take some time for me to complete that examination to determine whether or not I want to examine him at all or not on the subject.

Q. Is there anything else, Mr. Morgan?

A. The item of locomotives; there was some difference on that.

Q. Yes; that is purely one of price?

A. Yes.

Q. And I think there is no difference at all on the cars?

A. No.

Q. Passenger and freight.

A. No.

Q. On miscellaneous equipment.

A. No.

Q. And any differences that may appear on this Ex. 31 arise from the fact that a different basis of apportionment was used, isn't that it?

A. Yes.

Q. A different period taken or something of that sort?

A. Well, we both had the same period, but there was a little variation in percentage assignable to Minnesota as related to the entire system; that fluctuates a little bit from year to year.

Q. So that, with the very same machines, it might be a few thousand odd higher one year than another, depending on the use, etc., but as I understand it, taking the whole equipment of the Company outside of locomotives, there is no difference between you?

A. No.

Mr. O'BRIEN: "Defts' Ex. K—Morgan" now produced and marked, is a statement of the report of the Minneapolis & St. Louis Railway Company compared with the statement presented by the State's engineer, Mr. Morgan, and this is simply offered for the purpose of comparison, and the same statement is true with regard to the second subdivision of that statement, the subsidiary companies. We offer this is in evidence.

Adjourned until Monday, March 15th, at 10 A. M.

FEDERAL BUILDING, St. Paul, Minn., Thursday, August 26, 1909, the hearing was resumed at 10 A. M.

CONWAY W. HILLMAN,
sworn on behalf of Defendants, testified.

By Mr. O'BRIEN:

Q. What is your name?

A. Conway W. Hillman.

Q. You are the same person who testified in the case of Shepard vs. Northern Pacific Railway Company, et al, also pending before Judge Otis at this time.

A. Yes, sir.

Mr. O'BRIEN: I will omit all formal matters with reference to Mr. Hillman's qualifications.

The MASTER: They will be read into this case from the other case, I suppose?

Mr. O'BRIEN: Yes.

Q. State whether or not you have prepared an analysis of the operating expenses of the Minneapolis & St. Louis road.

A. Yes, sir, I have.

Q. Is that analysis, in general, similar to the analysis made by you of the account of the operating expenses of the Northern Pacific road, embodied in Exhibit 3-M-Hillman, in the testimony in that case?

A. It is, yes, sir.

Q. Had you the same assistance in the preparation of your report in the Minneapolis & St. Louis case?

A. Yes, sir.

Q. Have you prepared a statement embodying the result of your investigations?

A. Yes, sir, I have.

Q. If so, please present it.

A. The statement consists of fourteen tables.

Table produced marked "Defts' Ex. L-Hillman" and offered in evidence.

Q. You have stated, Mr. Hillman, that, in general, Defts' Ex. L in the present action follows the same lines as Ex. 3–M–Hillman in the Northern Pacific case?

A. Yes, sir.

Q. I wish you would now take Ex. L, and, as concisely as possible, explain each table, so that there will be an explanation of each table upon the record. I will amplify that question a little bit. I desire to suggest, Mr. Hillman, that inasmuch as many days were spent upon Ex. 3–M, in the Northern Pacific case, you will undoubtedly be able to condense your explanation of Ex. L, in this case, very materially, and if counsel desire any information on any particular point or any further elaboration of it, of course we can go into it then.

A. Table No. 1 shows the operating expenses, taken from the Minneapolis & St. Louis books, by divisions, for the state of Minnesota, together with a column showing the total operations in the state of Minnesota. Table No. 2 shows the same information for the divisions outside of the state of Minnesota, together with the total column showing total other than Minnesota, and another column showing total of all divisions, which is the total operating percentage of the entire Minneapolis & St. Louis property.

Mr. BUTLER: Did you mean divisions wholly without the state, or partly without and partly within?

WITNESS: Partly without and partly within. I will come to that in just a moment.

Q. Are there any divisions on the Minneapolis & St. Louis system portions of which are not within the state of Minnesota?

A. Yes, sir.

Q. Are they included in either Table 1 or 2?

A. Please note that there are five divisions outside of the state shown by Table No. 2 and that two of these divisions are distinctively outside the state.

Q. Entirely, you mean?

A. Yes, entirely outside of the state, viz., the Des Moines & Fort Dodge division and the M., D. & P. division (Minnesota, Dakota & Pacific). Those two divisions are entirely outside of the state. The Southern, the Pacific and the Southwestern (the first three shown upon Table No. 2) are overlapping divisions, and on Table No. 2 the overlapping proportions of these divisions are shown; the Minnesota proportion of these divisions is shown upon Table No. 1.

The MASTER: Then the St. Paul, Albert Lea and Western divisions are all within the state?

WITNESS: Yes, sir.

Q. The data contained on Table 2 is also taken from the books of the Company in the same manner as that upon Table 1?

A. Yes, sir.

Q. The only original matters being your totals?

A. Yes, sir, being the totals outside and totals inside of Minnesota.

Q. Now, before you go any further will you, in a few words, describe the Minneapolis & St. Louis system and the location of these divisions shown upon Tables 1 and 2?

A. I will have to make that rather general as that is one of the mems I didn't bring down with me.

Q. Well, we will pass it for the present.

A. I didn't think of that.

Q. Go on with Table 3.

A. Table 3 is taken directly from the records of the Minneapolis & St. Louis road, and shows, first, the car mileage, freight and passenger, in total; second, the freight-car mileage, divided into loaded, empty and caboose; third, freight ton miles, live weight and dead, the dead weight divided into the dead weight of the loaded cars and the dead weight of the empty cars; fourth, revenue-train miles, passenger and freight; fifth, the train miles, passenger and freight, including switching; sixth,

the engine miles, passenger revenue, freight revenue, switching, total passenger and total freight. This is shown for Minnesota by divisions with a Total column; for outside of Minnesota by divisions with a Total column; and then a Grand Total column showing the total for the system. Table No. 4 shows the division of the operating expenses in the state of Minnesota into freight and passenger on three methods; the first column, Minneapolis & St. Louis; second column, the Peabody including switching; third column, the method adopted by me in making the division.

Q. State whether or not double-column 1 is taken from the books of the Minneapolis & St. Louis Company.

A. It is, yes, sir.

Q. Mr. Hillman, I find that the total amount charged for operating expenses in Minnesota for freight upon the books of the Minneapolis & St. Louis Company is $1,068,917.79.

A. Yes, sir.

Q. And that the amount assigned by you to freight is $1,088,911.45?

A. Yes, sir.

Q. A difference of $20,000?

A. Yes, sir.

Q. Now, in the division made by the Minneapolis & St. Louis Company on items divided upon train mileage, is switching mileage included?

A. Yes, sir.

Q. By the Company itself?

A. Yes, sir.

Q. And have you followed the same method in dividing the items shown upon your column that you have explained in the Northern Pacific case with reference to your division?

A. Yes, sir.

Mr. BUTLER: Which one—No. 1 or No. 2?

WITNESS: No. 1. I would say, in reference to the Minne-

apolis & St. Louis division between freight and passenger, that for a quick method of obtaining results in the total operating expense, it produced a very fair result; that the intermediate details are not always such as I desired to use in this statement, and that therefore I made the division on my own method. The method followed by them, is (as I explained before), briefly, that the expenses, wherever possible, are allocated between freight and passenger by the Minneapolis & St. Louis road, and that all expenses not so allocated are divided on the following basis: The percentage of passenger-train miles and freight-train miles is determined, and we will say, for example, that it bears the relation of 60 per cent freight and 40 per cent passenger; then the car miles, freight and passenger, are determined—a percentage,—we will assume that these relations are 70 per cent freight and 30 per cent passenger. Now, we add these two sets of percentages together and obtain a result of 130 per cent freight and 70 per cent passenger; then, dividing them by 2, it gives the relation of 65 per cent freight and 35 per cent passenger. These, of course, are not the figures used by the M. & St. L., but they are to illustrate their method.

The MASTER: That joins together train mile and car mile?

WITNESS: Yes, sir.

Attorney General YOUNG: Add them together and divide them by 2?

WITNESS: Add them together and divide by 2.

The MASTER: That is, it amounts to a combination of the two?

WITNESS: Yes, sir.

The MASTER: I think Mr. Scott explained that quite fully in his testimony.

Mr. O'BRIEN: Yes, I think so.

Q. Where does switching come in in that?

A. Switching comes in in their freight and passenger train miles.

Q. Then the fact is that they combined three, the freight and passenger train miles, proper, switching miles and car miles?

A. Yes, sir.

The MASTER: How did they treat the switching? That is mile for mile?

WITNESS: Yes, sir.

The MASTER: There was a suggestion in the other case that two switching miles might be counted as one passenger-train mile, something of that kind; they were just put in as passenger and freight miles on a certain basis.

Q. Was switching called train miles or car miles?

A. Train miles. Nothing was done with it, as far as the car mileage went, at all.

Q. And how were the switching miles divided as between freight and passenger?

A. They were divided on the basis of the time of the switching engines used in the passenger business, and that was revised from time to time by the division superintendents to see whether they were using the correct factor or not; and that, having been determined, was carried forward from year to year on the basis of the prior experience or division of the division superintendent; and, as I stated in the Northern Pacific testimony, that amounted to about 4.6 per cent.

The MASTER: Passenger?

WITNESS: Passenger.

The MASTER: Then, including switching simply increased the passenger mileage 4.6 per cent of the total switching, and the freight mileage 95.4?

WITNESS: Yes, sir.

Mr. BUTLER: How was the switching mileage arrived at?

Q. Do you know how the switching mileage was arrived at by the Minneapolis & St. Louis Company?

A. Its basis was the regulation prescribed of 6 miles an hour.

Q. That is, 6 miles of switching were allowed for every hour of engineer's time?

A. Yes, sir.

The MASTER: Every hour of engineer's time counted 6 miles?

WITNESS: Yes, sir.

Q. And you have also here accepted the books upon that point?

A. The books of the Company, yes, sir.

The MASTER: Did you adopt that in your methods here, including switching, on the same basis?

WITNESS: Yes, sir, I accepted their books of the switching mileage and included it, of course, as I did in the N. P. case.

Attorney General YOUNG: In the N. P. case you took the books, too?

WITNESS: Yes, sir.

Q. Now, in the N. P. case, you assigned 5 per cent of the switching mileage to passenger?

A. Yes, sir.

Q. In the case of the Minneapolis & St. Louis, the Company had itself assigned 4.6 per cent to passenger?

A. My recollection is it is 4.67.

Q. And you accepted their books upon that point?

A. Yes, sir.

Q. In the Northern Pacific case, there had been no assignment on the books of the switching mileage to either freight or passenger?

A. No, sir.

Q. And you made that yourself and assigned 5 per cent to passenger?

A. Yes, sir.

Q. In the Minneapolis & St. Louis case, in accepting the books as to the total switching mileage, you have accepted a basis for computing that mileage, as you have described, that is, 6 miles for each hour of the engineer's time?

A. Yes, sir.

Q. In the Northern Pacific case, by accepting their books and records for the year for which you examined, you accepted a computation based upon 8 miles for each hour of each engineer's time?

A. Yes, sir.

Q. Now, if you will go on, Mr. Hillman.

A. Table No. 5 shows the freight movements, through and local, and all trains, carloads and less than carloads, and total of the Minneapolis & St. Louis Railway, as shown by the agents' abstracts and other freight records (which have been described in the N. P. case) for the representative months of October, 1907, and April, 1908. I would say that this table corresponds with Table No. 5 in the Northern Pacific case which has been designated as the "entitled-to" table.

Q. Mr. Hillman, both in the Northern Pacific case and in this case, the percentages of through and local freight, as it was entitled to be moved, can be determined from Table 5?

A. Yes, sir.

Q. You have not given the percentages, either in Table 5 in the Northern Pacific case or in Table 5 here, but it is a mere matter of computing those percentages from the totals you have given, is it not?

A. Yes, sir.

Q. Go on.

A. Next, comes Table No. 6, which establishes the local train-movement cost, the local and through tonnage movement on the Albert Lea and the Western divisions, the two divisions where they have the through tonnage, the relative cost of through and local, the train work, and the relative cost of inter and intra for train work.

Mr. BUTLER: Is this similar to Table No. 6 in the Northern Pacific case?

WITNESS: Yes, sir, it is similar to Table No. 6, excepting my

attention was called to the fact that I reversed "A" and "B." On the Northern Pacific, I had "B" where "A" is and "A" where "B" is, but I did not change my blue-prints for that, though I probably should have done so. It is simply a transposition of the two factors. In Table No. 6, division "B," I call your attention to the fact that we were without the factor of train weights on the M. & St. L.

Q. On the M. & St. L.?

A. On the M. & St. L., yes, sir; and that, therefore, we were compelled, in order to determine the amount of freight carried on through trains and local trains on the Albert Lea division, to use the loaded car mile as the factor. The M. & St. L. have a record where they set up the loaded car miles on each train, and I have compiled those, with the results shown in this division "B" of Table 6, to show the relative handling of freight on the trains, local and through. That is one of the cases where I was compelled by the records of the Company to use a different factor for arriving at the result.

Q. Where did you obtain the amount of the tonnage shown in division "A" of Table 6? For instance, under the head "Ton Miles, balance of Minnesota, local service only, 163,210,832"?

A. That is taken from the records of the Minneapolis & St. Louis Railway Company,—freight ton miles by divisions, and by states where the division splits into the states.

Q. You may go on.

A. With the exception of the use of this factor obtained by the loaded car-mile (instead of the ton-method on the Northern Pacific) the Table No. 6 is constructed on the same basis as Table No. 6 in the Northern Pacific. First determining the amount of freight carried on a through and local train on the main line, the next taking those divisions which constitute the train movements from Table No. 1 and taking the amount of these items for Minnesota amounting to $319,163.40, the two divisions for both through and local movement have an

expense on those same accounts of $241,764.67, which leaves for those same divisions, having the local service only, $77,-398.73; applying the ton miles to these divisions, we have 34,-332,247 train miles on the divisions having the local service only, which gives us a "Cost in fraction of cents on the balance of Minnesota showing the cost per ton mile of actual local train movements on these divisions which have only the amount of .22544 cents."

Q. The factor used, loaded car miles, is shown upon Table 3, is it not?

A. Yes, sir, but in this division "B" on Table 6 you will recollect that this loaded car mileage is taken from their records for the months which were under examination at that time, while Table No. 3 shows the record for the year of all the loaded car miles.

Q. Now, will you go on, Mr. Hillman.

A. We then take the percentage which is found in division "B" of Table No. 6 of 21.225 per cent of the tonnage as being carried on local trains and apply that to the total tonnage on the two divisions which have the through and local movement, the Albert Lea and the Western. That gives us of the 163,210,-832 ton miles 34,641,500 carried on local trains at a local cost, as determined by the branch-line method, of .22544 cents per ton mile or a cost of $78,095.80. Deducting both the ton miles and the cost from the cost as shown for these train movements on these two divisions, we have the through trains carry 128,569,-332 ton miles at a cost of $163,668.87, or a cost per train movement of .12730 cents per ton mile. Dividing the cost for through into the cost for local gives us 1.771 as the relative cost of local compared with through, or it costs 77.1 per cent more to handle freight on local trains than on through per ton mile on the Minneapolis & St. Louis road.

Mr. BUTLER: I would like to have the record show what is meant by "the branch-line method." I know, but I would like to have it stated.

Q. In giving your last answer you spoke about the branch-line method. What do you mean by that?

A. I mean that on certain divisions or branches (in this case divisions including the branches) only local trains were used in the operation. There were no through trains, save as has been mentioned, of incidental through trains on these branches, and that therefore the local cost of handling freight would be reflected by the expenses incurred on these divisions.

The MASTER: Do I understand that some of these divisions would not have a through movement or a through train, as a rule?

WITNESS: None of the divisions on the M. & St. L., outside of the Albert Lea division and the Western division, have through trains on their schedules.

Mr. BUTLER: Inasmuch as this "branch-line method" involves the determination that the cost on the branch lines is the criterion of cost for something else and local trains on the main lines, I would like to have it stated in the record, if this be a convenient place, just what branches were taken into account to establish the criterion, and, if anything beside the branches, what trains other than branch trains?

The MASTER: I was wondering whether we could use the word "branches" in this case, meaning by that a division on which there was no through service, through train.

WITNESS: Yes, sir. I would have to correct my use of the word "branch" in that respect on those divisions which had no through service, whether they are branches or part of the main line. I used that term "branch" because it happened, in the Northern Pacific case, that the branches were those divisions that I had to use and I had gotten that pretty thoroughly ingrained into my system and used it in that respect. They are the divisions where there are no through trains. Part of those are branches and part of them are what might be called the main line.

The MASTER: Have you used the term "branch" in the tables here in that sense?

WITNESS: No, sir.

Mr. O'BRIEN: He has given them balance of "Albert Lea and Western divisions" and then "balance of Minnesota."

WITNESS: "Leaving for same items on all divisions not having through service in Minnesota,"—in division "A," the fifth line.

Mr. BUTLER: If the table does not show exactly what trains were considered as the equivalent of the branch-line trains, as that phrase was used in the Northern Pacific, I would like to have it stated by branches and by trains elsewhere than by divisions, not the mere general definition. If it is convenient now, I would like to have it stated so we can pick out the trains taken into account to establish his criterion.

Q. Now, I will go back a little. In preparing your tabulations in the Northern Pacific case, you assumed that freight service consisting of only one kind of trains, which you designated local trains, would reflect at least the highest cost of any service upon the road, did you not, for train movement?

A. Yes, sir, that is the assumption.

Q. In the Northern Pacific case, there was no such single service to be found anywhere except upon the branches; is that true?

A. That is right.

Q. Now, will you explain generally the character of the service furnished by the Minneapolis & St. Louis road upon the different portions of its system?

A. On the Albert Lea division, which runs from Minneapolis and St. Paul (the Twin Cities) south to Albert Lea, there is both through and local service in freight trains. On the Western division there is also through and local service. On all the other divisions in the state of Minnesota there is no through service, according to their schedule. As I have said,

if there should be an accumulation of freight, it is a possibility that a through train may be run as an incident on these divisions, branch and main line, outside of the Albert Lea and the Western, but it is only an incident to the operation and not a method, and would not be considered as affecting the total result.

Q. Then, you have taken as the criterion for the cost of train movements for local service, all of the trains in Minnesota except those upon the Albert Lea and Western divisions?

A. Yes, sir.

Q. Have you included any of the trains upon the Albert Lea division or the Western division?

A. No, sir.

Q. With reference to that portion of the system outside of Minnesota, what have you done?

A. I have not considered it.

Mr. BUTLER: In the overlapping divisions?

WITNESS: No, sir.

Q. Then, can you not, by referring to Table 1, tell us exactly the divisions which you did consider?

A. St. Paul, Southern, Pacific and Southwestern.

The MASTER: Could you call them local divisions?

WITNESS: As called local divisions, yes, sir.

Q. Those divisions are entirely within the state of Minnesota?

A. No, sir, they are not entirely within the state of Minnesota, but the portion considered was entirely in the state of Minnesota.

Q. In arriving at the amount to be considered by you, how did you determine what portion of the entire expenses of the divisions considered should be taken to have been incurred in Minnesota?

A. By the amounts shown upon Table No. 1 on the respective divisions.

Q. Did you accept the assignment to Minnesota made by the Minneapolis & St. Louis Company itself upon its records?

A. Yes, sir, as these train movements consist of allocated items.

Q. Mr. Hillman, Table No. 1, I think you have already said, is a transcript from the records of the Minneapolis & St. Louis Railroad Company, with the exception of the last column showing the totals.

A. Yes, sir.

Q. That shows operating expenses upon that road by divisions?

A. Yes, sir.

Q. Table 1 is confined exclusively to the portions of the divisions in the state of Minnesota?

A. Yes, sir.

Q. The charges to each division for that portion of such divisions outside of the state of Minnesota are shown upon Table 2?

A. Yes, sir.

Q. And Table 2 is also a transcript from the books of the Minneapolis & St. Louis Company with the exception of the last column showing totals?

A. With the exception of the next to the last column showing the total other than Minnesota.

Q. Oh, yes, but the last column, the total of all divisions, is a transcript from the books?

A. Yes, sir.

Q. So that the assignments of the expenses territorially shown upon Tables 1 and 2, are the assignments made by the Minneapolis & St. Louis Company itself?

A. Yes, sir. Perhaps I should say here that in the Northern Pacific matter, on account of the fact that the ton miles were divisionally reported, it was necessary for me to go out of the state and take the expenses of the overlapping divisions

in order to determine this factor as the ton miles were not distributed divisionally to states. Here they were distributed to states and it was not necessary for me to go outside of the state and take in the overlapping divisions. I just enter that as the explanation of my not going out of the state in this M. & St. L. matter, because it was not necessary.

Q. Do you know what the result would have been if you had taken into consideration the entire divisions having only a local service and the entire ton miles upon those divisions?

A. I do not remember of having made that computation. If you will let me look at my data for just one moment, it may be there. I do not think I made it. (After examination of papers.) No, sir, I do not think I made that computation at all.

Q. I think we had finished division "C" of Table 6 when this other matter was brought up.

A. Yes, sir. In division "D," we take the ton miles as shown on Table No. 5 and for inter we take all ton miles shown on through trains at 1, all ton miles on local trains at 1.771, and find that the average for the total of the inter was 1.1915. We do the same for the intra and find that the total was 1.4313. If we divide the inter cost per ton mile for train movement into the intra cost per ton mile for train movement, we have the relative cost of 1 to 1.2013, or it would cost 20.13 per cent more to handle intra freight than inter. Table No. 7 shows the division of freight expenses found on Table No. 4, last column, into inter and intra.

Q. Just give the totals there.

A. Assigning $198,760.93 to intra and $890,150.52 to inter.

Q. What method did you use for the determining of the total freight operating expenses between inter and intrastate freight as shown upon that table?

A. The general method adopted by me in the Northern Pacific case.

Q. Mr. Hillman, if you can do so, briefly, will you describe what you mean by the method adopted by you in the division of the items appearing on Table 7 in the Northern Pacific case?

A. Briefly, in the maintenance of way and structure accounts we would take into account the amount of weight and wear of the switching movement and we would divide that upon the relative tons interstate and intrastate. We would take the other movement outside of switching and we would divide that on the ton-mile basis, the distinction being that the switching would accrue according to the tons handled and the outside of switching would be the train movement on the ton miles handled. That would be practically the division of maintenance of way and structures. The locomotive would be handled in the same way. Under maintenance of equipment, the repairs to locomotives would be handled in practically the same way on the division of the tons switching and the ton miles run on the road. The cars, repairs to freight train cars, would be on the equated ton-mile basis, shop machinery and tools being on the basis of preceding accounts and the balance of these accounts down to 37. Other expenses would be on this percentage of the preceding accounts. The maintaining of joint expense at terminal would be on the basis of tons handled. Equipment borrowed is mainly engines and would therefore be divided upon the conditions of the other equipment running on the road, which is the combined basis of tons for switching and ton miles for the train movement. It would therefore be divided upon the same basis as the steam locomotive repairs. The same is true of the credit items immediately following this. The traffic expenses, in the next division, are divided upon the basis of ton miles, between inter and intra, with the exception of the item of advertising, which we conclude accrued entirely to the state and have assigned it to intra expenses. The transportation expenses, first account, superintendence, is divided upon the basis of all the other accounts in superintendence.

The dispatching trains is divided on ton miles only. Station employes, the freight proportion of the agents' salaries is, as in the Northern Pacific case, divided in half, and one-half then divided between inter and intra on the basis of carloads and the other half on the basis of the relation of less than carloads, inter and intra. The other part of the station expenses are divided between inter and intra on the basis of the handling as expressed in the Northern Pacific case, that is, how many times it is necessary for them to handle less than carload lots, and the number of pounds of each multiplied by the handling, the totals brought forward, added and percented inter and intra. The weighing and car service associations on tons only, the relation inter and intra tons. Station supplies and expenses treated in the same way as station employes. The yard expenses are based on the basis of the relation of tons only as the yard expense is considered a switching expense and does not accrue on the ton miles but on the tons. The road engine men, engine house expenses, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 and 79 are on the basis of the train movement expense as established upon division "D" of Table No. 6, which assigns, multiplied out, 14.1757 to intra. Stationery and printing would be upon the basis of the other expense accounts in this division; insurance the same. Other expenses the same. Loss and damage to freight would be on the basis of ton miles; damage to property would be upon the ton-mile basis; damage to stock on the right-of-way on the ton-mile basis; the injury to persons on the ton-mile basis, and operating joint tracks would be upon the train-movement basis as established upon division "D" of Table No. 6. The general expense accounts are divided upon the basis of all the preceding accounts. There is an exception in the maintenance of way and structures account and that is in No. 14, buildings, fixtures and grounds. I would say in that case, as that includes all the buildings that they have on the road, (general office, freight and passenger depots, shops

and everything else,) I have considered that as equal to a general expense under the handling of the last grand division of our expenses and divided that, repairs of buildings, on that basis. I did the same in the Northern Pacific case. The next is the division of the passenger expenses into inter and intra. I would say in this respect that the passenger miles on the inter and intra in the state of Minnesota on this road were not available and had to be arrived at by computation of their earnings and average earnings per passenger per mile, which gave me a percentage of passenger miles of practically 50 per cent inter and 50 per cent intra, and I have used in this case 50 per cent intra and 50 per cent inter as the passenger mile relation. The percentage of passenger earnings is 54.92. Table No. 9 shows the freight earnings in the state of Minnesota. You will note that there are two years shown there, 1906–7 and 1907–8. I would say that the above figures in 1906–7 were prepared very carefully by Mr. Scott, of the M. & St. L., by special work and are vouched for as correct. It shows the amount allowed as intrastate from interline, which amounts to $39,372.03, or 2.0825 per cent of the total. I would say that in making this Table No. 6, Mr. Scott, the Comptroller of the Minneapolis & St. Louis, has very carefully revised his figures for the year ending June 30, 1907, in order to eliminate the error which has been so frequently spoken about in the Northern Pacific case, of freight way-billed and handled as intrastate when in reality it was interstate, and he has established the earnings very carefully upon the basis that I have used in establishing the tonnages upon my Table No. 5 which I have used; and I would also say that Mr. Scott established that for the year 1906–7, and I have discussed the matter with him and he expresses himself to me as being satisfied with the application of the percentages which he found in 1906–7 to the 1907–8 business, and I have therefore used in this Table No. 9 Mr. Scott's method for determining these divisions. In the first

place, we have taken off the detail of his monthly way-bills from his record, which you will note appears in the first column of the year 1907 and 1908, and these local way-bills are the local way-billing of the intrastate stuff. We then accepted his percentage of the interline way-billing as shown from the prior year applicable to the intrastate, which gives us a further credit of $34,871.51, making a total of intrastate business of $509,-141.45 and interstate business of $1,165,360.62, making a total for the state of Minnesota of $1,674,502.07. The refunds are handled by the general auditor and amounted, for that year, to $135,999.46. We have assessed intrastate with the same proportion of those refunds that are handled by the general auditor as their earnings bore to the total earnings, viz., 30.405 per cent; making this deduction we have $467,789.65 as the true intrastate freight earnings for the M. & St. L. road.

Q. Mr. Hillman, your tables 1 to 8, with reference to operating expenses and the division of those expenses, refer to the year ending June 30, 1908?

A. Yes, sir.

Q. In the case of the Northern Pacific road, your tables referred to the year ending June 30, 1907?

A. Yes, sir.

Q. Had there been a change in the classification of accounts, as the result of an order of the Interstate Commerce Commission, between the 30th of June, 1907 and the 30th of June, 1908?

A. Yes, sir. There was a new classification of accounts went in, which was very much more in detail, in the year ending June 30, 1908, than in the year ending June 30, 1907. One of the principal changes in that was the fact that all yard expenses were compelled to be shown separately, and the yard expenses being our switching expenses, removed that item from the direct operating accounts where these items of engine service, switching service, and so on, were shown as a total instead of being shown as yard service and road service.

Q. You prepared or made your analysis of the accounts of the Minneapolis & St. Louis a considerable time after you had made your analysis of the Northern Pacific accounts?

A. Yes, sir.

Q. And so were enabled to use the last classification of expenses?

A. Yes, sir. I will state here that these notes were written before the Northern Pacific examination and were laid to one side. At the time that I started the Northern Pacific investigation, the accounts for the year ending June 30, 1908, had not been made up and I was therefore compelled, in the Northern Pacific case, to examine and analyze the accounts for the year ending June 30, 1907, and I would call attention to the fact that under the new Interstate Commerce classification, there is quite an amplification of the accounts, but that they retain the same general divisions and ideas.

Q. Therefore, the numbers appearing opposite the accounts shown in Table 1, for instance, in Ex. L in this case, will not correspond with the numbers opposite the same account in Table 1, Ex. 3-M in the Northern Pacific case?

A. No, sir, they will not.

Q. In general, however, the accounts are the same except that there is more detail classification of them?

A. Yes, sir.

Q. You have, therefore, on Table 9, shown the earnings for the year ending June 30, 1908?

A. Yes, sir.

Q. And you have shown them, as I understand you, in this manner: You have taken the earnings as testified to in this case by Mr. Scott for the year ending June 30, 1907?

A. I do not know about Mr. Scott's testimony. I suppose that that is on the basis of his testimony, as those figures were those that he produced when I was there, and his testimony was based upon those figures. I have not looked to see whether that

absolutely coincides with them or not as I took them from the papers that we discussed together.

Q. You examined Mr. Scott's analysis of the earnings for the year 1907 as furnished to you?

A. Yes, sir.

Q. That showed that, on what you have designated as straight way-billing for intrastate business, the earnings during the year ending June 30, 1907, amounted to $548,616.34 as shown in the first column on Table 9?

A. Yes, sir.

Q. Which is what has been described as interline way-billing and overhead way-billing. There was a certain proportion which was also intrastate business?

A. Yes, sir.

Q. The interline way-billing amounting to $26,710.25 and the overhead way-billing amounting to $160.11?

A. The first item you mentioned was interline way-billing received. In addition to that (the two that you have mentioned) is the interline way-billing forwarded, $12,501.67.

Q. So that those three amounts added to the straight way-billing give a total of intrastate business for the year ending June 30, 1907, of $587,988.37?

A. Yes, sir.

Q. Deducting refunds amounting to $53,291.71 gives $534,696.66 as the intrastate freight earnings upon the Minneapolis & St. Louis road for the year ending June 30, 1907?

A. Yes, sir.

Q. Now, is that your statement of the amount of those earnings or the statement of the Company?

A. That is the statement of the Company. I looked at that revision which Mr. Scott made and I was satisfied with his method of revision. I did not check the clerical work at all, presuming, of course, that it was done correctly.

Q. Now, the three items so added to the straight way-billing

amounted, in the aggregate, to $39,372.03.

A. Yes, sir.

Q. Which was 2.0825 per cent of the total intrastate business so reported for the year ending June 30, 1907?

A. Yes, sir.

Q. You have, therefore, added to the straight way-billing of this road for the year ending June 30, 1908, the same percentage of the total straight way-billing for that year?

A. Yes, sir.

Q. In other words, the total straight way-billing as reported by the Company was $474,000,—

A. You will have to correct it and say the total percentage of freight earnings in Minnesota.

Q. The total percentage of the freight earnings in Minnesota?

A. Yes, sir. I was wrong in saying local way-billing. It is the percentage of the total freight in Minnesota.

Q. Now, the total straight way-billing reported for the year ending June 30, 1908, was $474,269.94 for intrastate freight?

A. Yes, sir.

Q. And by adding the percentage above stated, you add to that amount $34,871.51?

A. Yes, sir.

Q. Giving you a total of intrastate freight earnings for the year ending June 30, 1908, of $509,141.45?

A. Yes, sir.

Q. From which you deduct the refunds as reported by the Auditor of $41,351.80, leaving a net total intrastate freight earning on the Minneapolis & St. Louis road in Minnesota for the year ending June 30, 1908, of $467,789.65?

A. Yes, sir.

Q. And the interstate earnings, the total earnings, as further shown upon Table 9?

A. Yes, sir. I would like to say one further word about

this table, and that is to call attention to this monthly detail of local way-bills. That is inserted there for the purpose of proof of a subsequent table, and I will refer back to some of that monthly detail of local way-billing in a further table.

Q. From what were those totals taken?

A. From the Minneapolis & St. Louis records where they have a summary of those by months.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. I think the next table is Table 10, Mr. Hillman.

A. Yes, sir, Table No. 10, which shows the passenger earnings, inter and intra, for 1906–7 and 1907–8, on the same basis as the freight earnings in Table No. 9. That is, we have used the same percentage of interline as applicable to intrastate as was reported by Mr. Scott, the general auditor of the M. & St. L. in the year 1906–7, which he also examined very carefully for that purpose. We have shown the deductions in the same way.

Q. By deductions you mean refunds?

A. Yes, sir, refunds.

Q. This statement of the earnings for the year ending June 30, 1908, is, of course, while the 2-cent fare was in full force?

A. Yes, sir.

Q. And the same is true with regard to the freight earnings so far as the merchandise rates are concerned for the year ending June 30, 1908?

A. Yes, sir.

Q. Now, Table No. 11.

A. Table No. 11 shows the losses due to the reductions in the prescribed rates, "A" showing on class rates (Commission's order) rates already in effect in the Railroad's reports of earnings. The losses on $42,795.42, way-bills examined show $6,230.68. Under "B" the commodity rates—

Q. Now, just wait a minute. I don't understand what di-

vision "A" of Table 11 shows. You are there undertaking to show how much more the Company would have earned from the carriage of freight if the merchandise rates prescribed by the Commission in its order of September 6, 1906, were not in force?

A. Yes, sir.

Q. Well, now, what is the total amount?

A. The total amount would have been $49,026.10 as shown in the next to the last line of the reading matter under division "A." The total amount of the way-bills under the Commission's rates were $42,795.42, which indicates a loss of $6,230.68.

The MASTER: Does that mean that all of the way-bills were examined?

WITNESS: For the typical months, sir, of October, 1907, and April, 1908. Under the head "B" of the commodity rates we examined way-bills amounting to $86,134.24, of which there was a reduction on account of milling-in-transit of $40,987.87, leaving the net legislative freight $45,146.37, upon which the loss was $7,044.54. If you will now add the total of the way-bills examined under division "A" and the net legislative way-bills examined under division "B"—

Mr. BUTLER: What is meant by legislative way-bills or legislative freight?

WITNESS: I mean for the commodities affected by the legislative enactment which is not yet in effect. You will note that the total of the business examined on local way-bills for October and April is $87,941.79. If you will refer to Table No. 9, it will be noted from that that the total earnings of the road for those two months amounted to $89,347.62. I made this comparison for the purpose of determining whether or not we had obtained all the business which was affected and which should be taken into consideration. You will note there is a difference there of about $1,400, which would be accounted for by the fact that there is always a little bit of earnings (a few

hundred dollars in this case) carried over from the preceding month to the month in question and in turn carried over from the month in question to the succeeding month, which would make a very slight difference in the examination as we have conducted it, and, perhaps, in the railroad figures; and also in the fact that way-bills are often taken from the records for the purpose of determining the question of losses or question of overcharge in rates and there are always a few way-bills missing. So that would readily account for the small difference of $1,400 between the amount of way-bills examined and the amount of earnings reported by the Railroad, and would indicate that we have had the way-bills which represent the business of those months. We then find that this percentage of loss, $7,044.54, was 8.0104 per cent of the total business. We multiply this per cent into the total way-billing for that year of $474,269.94, as shown upon Table No. 9, and we obtain a loss for the year's business of $37,990.92.

Q. That amount is what you claim to be the reduction in revenue which would have occurred during this year if the rates prescribed by Chapter 232, Laws of 1907, had been in effect?

A. Yes, sir, that is the potential loss; the actual loss was, as shown under division "A," $6,000. By adding those two together we find that the loss is $13,275.22, or 14.097 per cent actual and potential. I state here that in making this computation, the Commission's order having been in effect, the loss on the Commission's order is already in the earnings as set forth by the Company, and that the only loss which it is necessary for us to consider in our final table is the potential loss on the legislative rates which are not in effect.

Q. Well, now, let me try to make that perfectly clear. In division "A" of Table 11 you have made a computation for the purpose of showing the additional amount which the Company would have earned during the year ending June 30, 1907, if no

order affecting rates had been made at all.

The MASTER: Merchandise?

Mr. O'BRIEN: Well, no order affecting rates.

The MASTER: That is right.

A. No, sir, only for the class rates.

Attorney General YOUNG: Merchandise.

WITNESS: Merchandise rates.

Q. Well, you show the total earnings of the road for that year, the actual earnings of the road for that year—freight earnings?

A. Yes, sir.

Q. Now, the only effect on those total earnings was the effect produced by the order of the Commission of September 6th?

A. Yes, sir.

Q. Consequently you are showing what the earnings would have been if no order or act of the legislature had been passed changing the rates which were in effect prior to September 6, 1906?

A. Yes, sir, that would have been for those two months, or, for the whole year, on that percentage, $33,494.36 more.

Q. More than they actually were?

A. Yes, sir.

Q. Your next computation is for the purpose of showing how much more the earnings would have been reduced if the legislative rates as contained in Chapter 232 had been in effect?

A. Yes, sir.

Q. And you find that to have been $37,990.92?

A. Yes, sir.

Q. If these two are added together, $33,494.36 and $37,990.92, we find what would have been the effect if both the class rates and the commodity rates had been in effect during the year?

A. Yes, sir, but with the understanding that, of course, we would start to make this total reduction of the two from the

earnings which would have been shown under the original status of the road.

Q. What was the percentage of reduction which was actually made by the operation of the class rates?

A. In the neighborhood of 13 per cent. The Judge just called my attention to the fact that I divided into the loss the amount which was left after taking the loss out. I should have divided by the 49,000, which would give about 13 per cent.

Q. And what is the percentage of reduction which would have occurred in the revenue derived from commodities if the commodity rates prescribed in Chapter 232 had been in effect?

A. About 15.6 per cent.

Q. And the total reduction actually made from the operation of the class rates and that which would have been made from the enforcement of the commodity rates would be what per cent of the total revenue?

A. 14.097.

The MASTER: Just let me ask a question. The per cent of loss for the year under merchandise rates was what?

WITNESS: About 13 per cent.

The MASTER: And commodity?

WITNESS: About 15.6.

Mr. BUTLER: Now, tell him the other one, while you are about it—total reduction on total revenue.

Mr. O'BRIEN: 14.097; that is on the total.

Q. I want to go back again for a moment. In division "A" of Table 11 you have shown the amount of the reduction in the revenue derived by the Minneapolis & St. Louis road from classified merchandise during the year ending June 30, 1908, caused by the enforcement of the order of the Commission of September 6, 1906?

A. Yes, sir.

Q. And that amounted to $33,494.36?

A. Yes, sir.

Q. You then examined way-bills for the same period for the purpose of ascertaining the amount of reduction which would be caused in revenue derived from commodities if Chapter 232 were in force?

A. Yes, sir.

Q. And found that to be $37,990.92?

A. Yes, sir.

Q. In your subsequent tables, however, in giving the revenue obtained by the Minneapolis & St. Louis Railroad Company during the year ending June 30, 1907, you have taken the actual revenue derived?

A. No, sir, I have deducted from that revenue the loss on commodity rates.

Q. Yes, I understand, but you have taken as the first basis the actual revenue derived?

A. Yes, sir.

Q. You have not added to that revenue this reduced amount coming from the operation of the class rates?

A. No, sir, I have not.

Q. And this division "A" of Table 11 is inserted here for the purpose, and for the only purpose, of showing the Master what the actual reduction in revenue had been from the operation of the classified rates?

A. Yes, sir.

Q. Is there anything in your tables which shows how the actual revenue received by the Minneapolis & St. Louis Company for the year ending June 30, 1908, compares with the actual revenue received by that Company for the carriage of freight for the previous year? and I am referring to intrastate freight exclusively in this question.

A. Yes, sir, that would be shown upon Table No. 9. It shows the freight revenue only, it does not show there the proportion of switching, storage, car service; it shows the freight revenue only. You will note there in the fifth column, Table

No. 9, 1906–7, $534,696.66, and immediately under the year 1907–8 it shows $467,789.65.

Q. You have not the figures with you for previous years?

A. No, sir.

Q. Table 12 is the next one which I will ask you to explain.

A. Table 12 shows the freight revenue brought over from Table No. 9, in the first line, $467,789.65; it shows the proportion of the switching attributable to intrastate, the total for the state switching earned being $25,861.48, as shown on pages 45 and 45–A of the annual report of the M. & St. L. road for that year to the State of Minnesota; and it is apportioned to the intrastate on the basis of carloads inter and intra as shown upon Table No. 5. The next item is storage and shows a total (from the same report and same pages) of $393.21 to the state and is apportioned to intrastate on the basis of less than carloads, the intrastate proportion being 41.5 per cent, giving it $163.18. The next is the car service, $8,574.88 (on the same pages of the same report) on the basis of train expenses as per Tables 6 and 7, showing intrastate 16.048 per cent, $1,376.10 assignable to intrastate; making the total freight receipts $474,276.23. Deducting the loss which is shown upon Table No. 11 of $37,990.92 gives us intra freight receipts, with all reductions out, of $436,285.31. The expenses of the intrastate freight, as shown upon Table No. 7, amount to $198,760.93, to which we add certain charges to income, which in 1906–7 were classed as operating expenses (pages 41 and 73 of the report to the State for that year,) but which are now classed as income under the new orders of the Interstate Commerce Commission, being "Rentals, tracks, yards and terminals," making a total of $55,930.35; of which according to the intrastate tons, on Table 5, 20.511 per cent is assignable to intrastate, making $11,471.87 of these expenses assignable to intrastate traffic, and giving us a total of $210,232.80 of operating expenses and charges to income which are closely related to operation. The

taxes, 4 per cent on the earnings of $436,000, amount to $17,451.41, making a total reduction of $227,684.21, leaving the net earnings of freight applicable to interest and dividends of $208,601.10.

Q. 48.19 per cent appearing in this division of Table 12 means that the actual operating expenses for freight as you have given them absorbed 48.19 of revenue?

A. Yes, sir.

Q. 4 per cent the taxes?

A. Yes, sir.

Q. And the 47.81 per cent of the total revenue is net?

A. Yes, sir.

Q. Go on, Mr. Hillman.

A. Into division "B" we bring over the $208,601.10 from division "A"; we then have a receipt for hire of equipment $28,081.63, as shown on page 39 of the report to the State, of which, on a ton-mile basis, the State of Minnesota gets 72.76 per cent, as shown upon Table No. 3, or $20,432.19. Multiplying this by the ton-mile basis for intra, which is 13.728 per cent, as shown upon Table No. 3, also gives us $2,804.90 as the intrastate proportion of this credit to income. The joint facilities in the state of Minnesota amount to $114,820.07, as shown upon page 69 of the report to the State. The freight percentage of the joint facilities, on the basis of the operating per cent showing the use, as per Table No. 4, is 70.352 per cent, which equals $80,778.22, of which the operating percentage (Tables 6 and 7,) 18.253 per cent is intra, giving us a credit to income, intra, from this source of $14,744.45. The "other items, rental from lease, $500," on the same percentage as the item above referred to, give us $64.22 as the credit to income from this source,—a total further credit of $17,613.57. From this we deduct 4 per cent for taxes, giving us a net credit of $16,909.03. Adding this to the $208,601.10, brought over from division "A," gives us freight earnings and income applicable to interest and divi-

dends of $225,510.13. We have certain other items, as in division "C" of miscellaneous earnings, which are neither freight nor passenger distinctively. These amount to, as per the detail on Table 12, $3,195.88, from which we deduct 4 per cent for taxes, leaving us a net of $3,068.04, of which, on the basis of operating percentage as showing the use, 70.352 per cent is freight, equaling $2,130.43, and the intra proportion, on the same basis, is 18.253 per cent of the above $3,068.04, giving from this source a credit to freight, intra, of $388.87, or a total amount from all sources for freight proportion of $225,899.

Q. In division "A" of Table 12 you include certain expenses, and in giving them you refer to certain pages of the report made by the Company to the State of Minnesota. Are those expenses assigned to Minnesota and outside of Minnesota as you have assigned them here?

A. Yes, sir.

Q. Upon their report?

A. Yes, sir.

Q. Now, with reference to the credits to freight business shown in division "B" and the miscellaneous earnings shown in division "C," are they also segregated upon the reports to the State?

A. The hire of equipment is not, and it is in total.

Q. And credited to Minnesota as in the case of the Northern Pacific, or how is it?

A. No, sir, it is credited in the general income account of the Company as $28,081.63 credit to the income account.

Q. The reason I asked you was, if I remember rightly, when you were testifying with reference to the Northern Pacific, certain similar earnings were credited entirely to the State of Minnesota, and you in your computation segregated them between interstate and state business. They were not reported in the same manner, you say, by the Minneapolis & St. Louis?

A. No, sir. In the next item, Joint Facilities, I have from

page 69 picked out the Minnesota items, as you will notice there.

Q. Yes, but having picked out the Minnesota items, you have assigned them to—

A. To freight, and then intra freight.

Q. To freight and then again into—?

A. Intra freight.

Q. And interstate freight, as shown on this table?

A. Yes, sir.

Q. Will you take up Table 13?

A. On Table No. 13, the passenger revenue brought over from Table No. 10 amounts to $333,818.72. The other passenger receipts (taken from pages 45 and 45–A of the annual report to the State of the Minneapolis & St. Louis for this year,) are excess baggage,—shall I read the amounts?

Q. No, give the total.

A. Excess baggage, parlor and chair car, mail and express, baggage, storage, library cars loss.

The MASTER: What does that mean?

WITNESS: It means the library cars were operated at a loss of $940.

The MASTER: That is deducted, then?

WITNESS: Deducted, yes, sir,—starred. Which gives us a total of $110,460.97 of passenger earnings from these sources. We assume this earning is divisible on the basis of the expenses inter and intra, since the expenses were incurred in making this earning as well as in the operation of the other service. Table No. 8 shows an intrastate per cent of 52.33, making assignable on this account $57,804.23 to intrastate. The train and station privileges are taken as all intrastate earning, being $2,414; making a total passenger earning of $394,036.95. The operating expenses, intra passenger, taken from Table No. 8, amount to $240,130.57, to which we add certain expense items closely allied to operating but now classified under deductions from income, (pages 41 and 73 of the annual report to the

State,) passenger percentage of the rental of track, and so on, amounts to $12,614.31. This is divisible upon the passenger miles intra, assigning one-half of it to the intra operating expense, or $6,307.15, making total operating expenses, including rental of tracks, yards and terminals, of $246,437.72, and net from operation of $147,599.23; from which we deduct the taxes of 4 per cent, $15,781.15, which gives us a net of $131,818.08 as the net passenger income including these expenses which I have mentioned closely allied to operating expense, that being an income expense.

Q. When you say "net passenger income" you mean net passenger income from fares, for the carriage of passengers?

A. From the carriage of passengers and from other facilities; you might call them train receipts. We have, then, under division "B," the passenger income. We bring forward from division "A" $131,818.08; the joint facilities passenger proportion (taken from Table 12, division "B,") amounts to $34,041.85; dividing that on the passenger miles, 50 per cent intra, gives us $17,020.92 as the intrastate proportion. The rental of the leased road, the passenger percentage (from the same table, division "B") is $197.34; divided on the basis of passenger miles, 50 per cent intra, gives us $98.67 from this source, or a total of $17,119.59; from which we deduct 4 per cent taxes, leaving a net of this additional passenger income of $16,434.81, which added to the $131,818.08 brought forward from division "A," gives us net passenger earnings and allied income of $148,252.89. We now have the amount of the miscellaneous earnings not distinctively freight or passenger applied to the passenger business. Table "12" I should put in there. Table "12" division "C," passenger percentage expense basis is $937.61, of which 50 per cent is intra, giving another credit from miscellaneous earnings applicable to passenger of $468.81; making total income from all sources applicable to the intra passenger of $148,721.70.

Q. You have not in any table in Ex. L brought the freight and passenger earnings together, have you, Mr. Hillman?

A. No, sir, I have not.

Q. To obtain the total net income from the carriage of freight and passengers during the year ending June 30, 1908, as shown by you, the net income from freight appearing at the botton of Table 12 and amounting to $225,899, should be added to the total net income from passengers found at the bottom of Table 13, amounting to $148,721.70?

A. Yes, sir.

Q. And those amount to a total of how much?

A. $374,620.70.

Q. Which is your statement as to the total net income during that year in Minnesota from intrastate business, freight and passenger?

A. Yes, sir.

Q. Now, in Table No. 12, the last item is total income, all sources applicable to intrastate freight; that means total net income, does it not?

A. Yes, sir.

Q. And the word "net" should be inserted,—total net income?

A. Yes, sir, total net income.

Q. And the same is true in regard to the last item appearing on Table 13; that is the total net income?

A. Yes, sir.

Mr. O'BRIEN: If there is no objection, we will all insert that in our copies.

Q. Now, will you take up Table No. 14?

A. Table 14 is for the purpose of showing the operating percentages, freight, passenger and all, the intrastate and interstate. We find that the intrastate freight earnings, after deducting the losses, were $436,285.31; that the operating expenses including the rentals of tracks, yards and terminals, as

explained upon Table No. 12, were $210,232.80; which gives an operating percentage, freight, intrastate, of 48.19. The interstate earnings were $1,099,155.95. The operating expenses, including rental of tracks, yards and terminals, were $934,609, giving an operating percentage for interstate of 85.03. The total earnings, freight, losses out, were $1,535,441.26. The total expenses, including rental of tracks, yards and terminals, as above mentioned, were $1,144,841.80, or a percentage of 74.56.

Q. Now, what do you mean by "losses out"?

A. I mean that I have taken out from the earnings the losses which would be inflicted upon the Company by the operation of the legislative rates on commodities.

Q. Then this statement of these earnings on which you have based your computation as to the operating expenses, includes not only the losses or reductions which resulted from the operation of the class rates but the reductions which would have resulted if the commodity rates had been in effect?

A. Yes, sir.

Q. Is it not an unusual thing to find the operating expenses for intrastate business less than the percentage of the operating expenses for interstate business?

A. Yes, sir. In my notes here I have,—"I would call attention to the conclusion reached upon Table 14 showing the low percentage of the operation of intrastate as compared with the high percentage of interstate," and at the same time I will state that this is in conformity with a statement made by Mr. Tittemore, the traffic manager, in this case, wherein he states the difficulties of the M. & St. L. road being an intermediate road and being compelled at times to carry freight from Minneapolis to Albert Lea for nothing; that is, wheat destined to Chicago milled in transit at Minneapolis, owing to the fact that the connecting lines demand their full proportion of the rate, that it is frequently hauled from its origin to Minneapolis.

milled at Minneapolis and then hauled south at practically no remuneration whatever to the Company from Minneapolis to Albert Lea. This condition of affairs is reflected by this analysis as summarized on Table 14.

Q. Now, as to passenger as shown on Table 14.

A. As to passenger we have the intrastate earnings of $394,036.95, and expenses of $246,437.72, or an operating per cent of 62.54; and interstate we have passenger receipts of $354,569.59, and operating expenses of $225,750.86, an operating percentage of 63.67; the total passenger receipts being $748,606.54, the total passenger operating expenses being $472,188.58,—an operating percentage of 63.08. The next division shows the operating percentages obtained by adding all the receipts, passenger and freight, together, intra and inter, and the passenger expenses together, intra and inter, and gives a total operating per cent for both classes of business—of intrastate of 54.99, of interstate of 79.82; of all business, of 70.80. I looked up those divisional lines, if it is desired to speak of them, but I believe it was stated that they had already been stated by the other witnesses in this case.

The MASTER: Well, you may do it briefly.

Mr. O'BRIEN: I think Mr. Tittemore, Mr. Scott and all the rest of them testified to that.

The MASTER: I think they did.

Q. Do it briefly, Mr. Hillman; just make a brief statement of where the divisions are.

A. The Albert Lea division runs from Minneapolis to Albert Lea.

The MASTER: All in Minnesota?

WITNESS: All in Minnesota, has no branches. The Western division runs from Minneapolis or from a junction just south of Minneapolis (Hopkins) to Morton, directly west.

The MASTER: In Minnesota.

WITNESS: In Minnesota.

The MASTER: And those two are the only two through and local divisions?

WITNESS: Yes, sir. The Pacific division commences at Morton, where the Western division leaves off, and runs to Watertown, South Dakota, crossing the border; the Southwestern division commences at Lafayette, near Winthrop, on the Western division, and runs south to Storm Lake, with a branch from Spencer over to Fort Dodge; only a portion of it (and all on a straight main line with no branches,) is in the state of Minnesota. At Albert Lea the Southern division commences and runs to Fort Dodge and Des Moines. It has some branches, but none in Minnesota.

CROSS-EXAMINATION,

By Mr. BUTLER:

Q. In getting at the percentages which you have indicated on Table 14, did you take into account the freight earnings as they actually were or as they would have been had the commodity rates not been enjoined?

A. I took them as they would have been had the commodity rates not been enjoined and been taken out of the earnings of the Company.

The MASTER: That means you took them as they were, then?

WITNESS: No, sir, I deducted the amount which would have been inflicted by the commodity rates on Table No. 14.

Q. You made no comparison, did you, or estimate to ascertain the percentage of operating cost or cost of doing the class business compared with the revenue from the class business, or the cost of commodity business compared with the revenue from the commodity business intrastate?

A. No, sir, I did not.

Q. From your examination would you say it would be right to assume that the percentage in one of cost to revenue is about the same as it is in the other; in other words, that the relation of the rates, class compared with commodity, is about right?

A. I made no computation of the cost of that, and I couldn't say.

Q. Have no opinion?

A. No, sir, I formed no opinion.

Q. Well, let us assume that the amount of profit in one class of business is the same as it is in the other, for the purpose of my further questioning. Now, if this percentage 48.19, the intrastate operating cost of freight to the revenue, were to be computed on the basis of the rates as they are, commodity, that percentage would be somewhat lower, would it not?

A. Yes, sir.

Q. The commodity revenue intrastate is reduced 15.6 per cent, isn't it?

A. Yes, sir.

Q. And that, roughly speaking, would reduce the operating cost to revenue on that basis to about 40 per cent, would it not?

A. Yes, sir.

Q. So then, it is your opinion, after this analysis, that the commodity business of the Minneapolis & St. Louis road that is local to Minnesota, beginning, moving within and ending within Minnesota, is done at a cost of 40 cents out of every dollar of revenue earned?

A. Yes, sir, that is what the figures show.

Q. That is what your figures show. That is much lower, is it not, than the like matter on the Northern Pacific road?

A. Yes, sir.

Q. About 25 per cent, isn't it—more than that—of the operating expenses? That figure on the Northern Pacific was over 60, was it not?

A. I don't recall now.

Q. As amended it was over 60 after the elimination of your mistake?

A. I should say about that.

Q. The haul was longer on the Northern Pacific, was it not,

on the average, of these commodities, from your examination and revision of the way-bills?

A. I don't remember; I should judge, though, from the location of the road, sir, that it was.

Q. Surely was, beyond doubt, wasn't it? The train weight was heavier, was it not?

A. I should say it would be slightly heavier.

Q. The traffic was denser?

A. On that matter I couldn't say; I should suppose it was, I have not examined the statements to see.

Q. The car loading was heavier?

A. I couldn't say on that point, but I think not.

Q. Have you in mind the figures of either, the average loading per car, of the Northern Pacific and the Minneapolis & St. Louis?

A. The average on the M. & St. L. is about 17 tons.

Q. Yes; running in my head—

A. My recollection of the other is about 20.

Q. The mileage travel per day is greater on the Northern Pacific, is it not?

A. Yes, sir.

Q. Per car, per train?

A. I don't know, sir, without examination of the records.

Q. You would expect it so, considering the two lines and the length of them, and the haul, etc., character of the country served, would you not?

A. The train mileage would be very similar, there would be very little difference in train mileage because the divisions would be nearly the same.

Q. The rates were the same substantially?

A. That I could not say without looking it up.

Q. If anything, they ranged higher in the northern part of the state, where the Northern Pacific is, than in the highly competitive territory where the St. Louis is?—you revised those way-bills, didn't you?

A. They were done under my direction, yes, sir.

Q. And you would say that the rates on the Minneapolis & St. Louis were not higher than on the Northern Pacific?

A. I would think that they would be, sir, but that I could not tell without looking.

Mr. O'BRIEN: You are referring to commodities now?

Mr. BUTLER: Yes.

Q. Now, 40 per cent operating cost is very low, isn't it?

A. Very.

Q. Unusual and almost unheard of?

A. It is a very low operating cost.

Q. That argues a very high degree of efficiency in operation in that department of the Minneapolis & St. Louis which moves intrastate commodity freight, does it not?

A. I didn't know there was any such distinctive division in their operating departments, but I would say that the operating percentages shown in Table 14 were so low as to induce me to figure over my work again in order to be sure that I had the right figures.

Q. In figuring the effect upon revenue that the application of the commodity rates would have had, you confined your estimate to intrastate business, did you not?

A. Yes, sir.

Q. And you assumed that it would have no effect whatever upon interstate business or revenue, did you not?

A. We took no account of the interstate revenue and what reductions it would make in that.

Q. And therefore your computation is upon the assumption that the application of these rates to the intrastate business in the state would have no effect upon the interstate business on the same commodities?

A. I made no deduction whatever for interstate business.

Q. The reduction on intrastate revenue is 15.6 per cent, as you estimated it, on the commodities?

A. Yes, sir.

Q. Now, if we assume that there would be like per cent of reduction upon the interstate commodity business in Minnesota, your computation would establish that the interstate business was done at a loss, and that operation didn't give a new dollar for an old one by adding 15.6 per cent to 85.03; you would lose a little more than a cent on each dollar, would you not?

A. No, sir, for the reason that you are applying the 15 percent of the commodity business to the entire business, which you would have to reduce to 8 percent.

Q. I asked you to assume, when we began this inquiry, that the operating factor in the class business and in the commodity business to revenue was the same, because you didn't know to the contrary and had no opinion, and this question is based upon that assumption, also; and if that assumption be included in the question with the assumption of 15.6 percent reduction of Minnesota interstate revenue on commodities, then the interstate business would be done at about a cent on the dollar loss, wouldn't it, or .63 of a cent on the dollar?

A. No, sir, there would be only 8 percent loss on that, not 15.

Q. How do you make that out?

A. For the reason that whatever trouble would ensue to your interstate earnings from the application of the Commissioners' rates has already been reflected in those earnings and that the only thing that you could possibly apply to it would be the 8 percent which the commodity rate has affected the original business and therefore could only affect it that way.

Q. That would make the interstate factor what, then, according to your testimony? With the commodity rates in and with the same reduction on interstate rates as on the other, make it 93 and a fraction, would it, instead of a hundred and a fraction?

A. On that supposition it would give practically 92.4 percent.

Q. Well, now, I don't understand this percentage business very well, but let me see. Let us assume now that to do the Minnesota interstate commodity business it takes 85 cents out of every dollar of revenue, and let us assume that we reduce the revenue 15 percent; won't you break even?

A. No, sir.

Q. Well, now, let me see. I have always had that in my head since these rate cases commenced. Let us assume one dollar of revenue from the class of business referred to in the last question; if we reduce that 15 percent then it is 85 cents, isn't it?

A. Yes, sir.

Q. Now, if it costs 85 cents to earn a dollar under the old rates, and the new rates are reduced to 85 cents, you would break even, wouldn't you?

A. Yes, sir.

Q. It doesn't require any figuring in percentages at all, it is just subtraction, isn't it? Now, if I am right, how can you be right on your 93?

A. 8 percent of your interstate earnings of $1,099,155.95 amounts to $87,932 and a fraction; which, if we subtract from the earnings, gives us $1,011,223; which, if you divide into $934,609 expenses, gives us 92.4 per cent operation.

Q. Well, that isn't the question I asked. I will pass it, because what I intended to ask is made clear by my subsequent question, which is this, to-wit: if it costs 85 cents now to earn a dollar and you reduce the rate 15 per cent, then it will break even, won't it?

A. Yes, sir.

Q. So taking your Table 14, if this 85 per cent operating expense may be applied to the interstate commodity business in Minnesota, and if the application of these rates which have been enjoined would reduce the interstate rates in Minnesota or revenue in Minnesota 15 per cent, it would result, would it

not, on these percentages, in the Company doing business at an actual loss and not getting a new dollar for an old one?

A. Yes, sir, and it would decrease our interstate earnings by 52 per cent, and you would have nothing on them, either.

Q. You haven't made a study of the problem of the effect of the state commodity rates which have been enjoined upon interstate rates, have you? You don't undertake to qualify as an expert in that field?

A. I have not made any investigation in this case on the subject. I will qualify that: I have made an investigation, but I have not been called on to testify on the point, the investigation was a very slight one and I didn't pursue it very far.

Q. No, you dropped it?

A. I said I did not pursue it very far.

Q. Now, this cross-examination would be very much shortened if I may state to you what I would like to have disclosed in connection with your direct-examination, and you may take such time to disclose it as you need. There are four or five divisions evidenced by this exhibit, are there not, of cost: First, between states, next between freight and passenger; then freight between state and interstate, and passenger between state and interstate, would be four divisions; am I right about that?

A. Yes, [illegible].

Q. You made three of them?

A. Yes, sir.

Q. That is, you made a division between freight and passenger and then a division of passenger and freight cost between state and interstate?

A. Yes, sir.

Q. Now, as to the first one that you didn't make, do you know how it was made?

A. Yes, sir.

Q. Was it made on the same basis that the Northern Pacific was?

A. Yes, sir, practically on the same basis as the Northern Pacific.

The MASTER: That is, in and out of the state?

WITNESS: Yes.

Mr. BUTLER: That is the division between states territorially.

Q. Now, I would like to have you take these four divisions in detail and state how each was made as to each item in some tabulated form,—it was all derivable from your direct-examination as to the divisions that you made in the Northern Pacific case. That is to say, take the first item, and if it is all allocated on the first division, so state, if it is allocated directly; if partly allocated and partly divided, show how much was directly allocated, how much was common and the basis for division and the percentage; and the same way through, as between passenger and freight to state cost and interstate cost, both freight and passenger.

A. Yes, sir, I will do that.

Q. In the Northern Pacific case, in your cross-examination, you told me there were certain rules deducible from your exhibit in that case, and you wrote out some of them and read them into the record and furnished us a copy of it; I would like to have you do the same thing here for this record in this case.

A. All right.

Q. Make it applicable to this case.

A. The rule doesn't say that, nor does it confine me to any method of determining local train cost.

Q. In the Northern Pacific and Great Northern cases it was made to appear, either by you or by some other witness, and was discussed when you were on the stand, what was the relation of revenue per ton per mile for the state business and for the interstate business. In the Northern Pacific that relation was as 144 is to 100, in the Great Northern that relation was,

(leaving out the ore division or Mesaba division,) if my memory now serves me, as 177 is to 100; including the Mesaba division it was as 203 is to 100. Can you furnish me like information in this case?

A. Yes, sir.

Q. What is the relation?

A. Oh, I can do so, yes, sir; I haven't figured that out, though.

Q. Very well, if you will; and let me have that with the other, before the resumption of the hearing.

RE-DIRECT EXAMINATION

By Mr. O'BRIEN:

Q. In your cross-examination this afternoon you were asked, for the purpose of determining as to whether or not the percentage of operating expenses found by you to be attributable to intrastate freight was correct, to make certain estimates with reference to the operating expenses found by you as charged to interstate freight, were you not?

A. Yes, sir.

Q. And in answering those questions you were asked to assume that what you found as the operating percentage of intrastate business applied equally well to the commodities moved by the Minneapolis & St. Louis road; that is, that 48.19 per cent of the revenue derived from the carriage of commodities would be absorbed in the expense of moving these commodities?

A. Yes, sir.

Q. As a matter of fact, the 48.19 per cent which you have found is the percentage which the operating expense is of moving all classes of interstate freight?

A. Yes, sir.

Q. Commodities belong to one of the least expensive classes of freight, do they not, consisting of grain and coal?

A. Yes, sir.

Mr. BUTLER: Per ton per mile.

Q. And always move in carload lots?

A. Yes, sir.

Q. Now, Mr. Hillman, for the purpose of carrying to a logical conclusion the assumptions which counsel asked you to indulge in, including the assumption that the effect of the enforcement of the commodity rates in Minnesota would be to reduce the earnings upon interstate commodities to the same extent, I desire to ask you to make a computation: The rate allowed upon soft coal by Chapter 232 for a haul of 106 miles, which is the distance from St. Paul to Albert Lea, takes the rate allowed for a haul of 110 miles, and that, we find upon page 55 of the bill of complaint, is $1.20; if we assume that that commodity is carried at the very lowest operating percentage which you have found, that being the operating percentage for intrastate freight, 48.19, what is the cost of carrying that ton of coal between St. Paul and Albert Lea?

A. 57.8 cents.

Q. In that you have used the lowest operating expense found upon your tables?

A. Yes, sir.

Q. Do you know that the rate or the amount received by the Minneapolis & St. Louis upon soft coal from the Illinois coalfields which it receives at Albert Lea and carries to Minneapolis is 40 cents per ton?

A. No, sir, I do not know the rates.

Mr. BUTLER: And 85 per cent of that would be 34 cents, so they could haul that ton for 34 cents.

Q. If the rate actually received by them upon that interstate shipment is 40 cents per ton and the lowest cost which you find is 57 cents per ton, that freight is carried at an absolute loss, is it not?

A. It would be, yes, sir.

Q. But if, as a matter of fact, coal being a commodity which

can be carried at very much less than the average rate per ton, you might find, if the average cost of transporting freight from Minneapolis to Albert Lea is 57 cents per ton, that coal could be carried for anywhere from 20 to 30 cents per ton, might you not?

A. Yes, sir, that might be.

Q. If, then, coal is carried at, say, a cost of 30 cents per ton, and the amount received by the Minneapolis & St. Louis for that interstate service was 40 cents per ton, it would then absorb 75 per cent of the revenue, would it not?

A. Yes, sir.

Q. While if that coal still cost 30 cents per ton and was carried at the intrastate rate of $1.20 per ton it would absorb only 25 per cent of the revenue, would it not?

A. Yes, sir.

Q. So that this comparison of the operating percentages shown by you as between state and interstate business amounts to nothing, so far as determining their relative correctness, unless you also take into consideration the relative rates received?

A. Yes, sir.

Q. Isn't that true?

A. Yes, sir.

By Mr. BUTLER:

Q. Well, for the purpose of further illuminating the record of these coal comparisons, Mr. O'Brien asked you to assume, as I think the evidence shows, that in the division of a through rate the Company gets 40 cents for hauling a ton of interstate coal from Albert Lea to Minneapolis. Now, if you would apply your 85 per cent to that, it would show that that interstate ton was hauled at 34 cents, wouldn't it?

A. Yes, sir.

Q. But you have just figured out on the other percentage basis that the intrastate ton was hauled for 57 cents?

A. Yes, sir, 57.8.

Q. Now, it also appears in the evidence that for hauling 7 miles north of Albert Lea to a place called Bancroft, I guess it is, they get 40 cents; how much profit in that? What would the operating factor be on the 7-mile haul on your 85 per cent basis?

Attorney General YOUNG: You are assuming an operating charge could be estimated on a specific haul. Of course, it is an average that amounts to nothing, because you can't tell on a specific haul.

Adjourned until August 27th, at 2 P. M.

On the afternoon of Friday, September 24, 1909, the following stipulation was made:

CIRCUIT COURT OF THE UNITED STATES.
DISTRICT OF MINNESOTA
THIRD DIVISION.

WILLIAM SHILLABER,

Complainant,

vs.

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, EDWARD T. YOUNG, IRA B. MILLS, CHARLES F. STAPLES, WILLIAM E. YOUNG,

Defendants.

Suits have been brought, and are pending in this court, by David C. Shepard, Complainant, vs. Northern Pacific Railway Company, Edward T. Young, et al., Defendants; by John S. Kennedy and Henry F. Dimock, Complainants, vs. Great Northern Railway Company, Edward T. Young, et al., Defendants; and by Henry A. James, Complainant, vs. Great Northern

Railway Company, Edward T. Young, et al., Defendants; and by various other complainants against various other railway companies and said Edward T. Young, defendants; all of which suits are stockholders' suits against railway companies, Edward T. Young, as Attorney General of the state of Minnesota, the members of the Railroad & Warehouse Commission of the state of Minnesota, and other defendants, in which such stockholders complain that the defendant railway companies have put in force and effect, or will put in force and effect unless restrained, certain rates prescribed by the legislature of the state of Minnesota or by the Railroad & Warehouse Commission of the state of Minnesota, and that such rates and all thereof are invalid and the laws and orders prescribing them are unconstitutional and void.

In each of said suits the bill of complaint avers, among other things, that such respective stockholders, complainants, had, prior to the institution of such suits, made demand upon the respective railway companies and officers and managing directors thereof that they should respectively refuse to put into effect such prescribed rates so complained of as had not theretofore been put into effect and should refuse to keep in effect such prscribed rates so complained of as had theretofore been put into effect; that such respective defendant railway companies and the officers and managing directors thereof refused to comply with such respective demands.

All of such suits were begun practically simultaneously. Testimony in this case, in the case of Shepard vs. Northern Pacific Railway Company, et al, and in the cases of Kennedy and Dimock vs. Great Northern Railway Company and James vs. Great Northern Railway Company, which latter two cases have been consolidated, has been taken contemporaneously. In the suit of Shepard vs. Northern Pacific Railway Company, the averments of the bill of complaint with regard to the demand made by complainant therein upon the defendant railway

company and its officers and managing directors, as hereinabove set forth, have been proved and established in full. In the consolidated cases of Kennedy and Dimock, complainants, and James, complainant, vs. Great Northern Railway Company, it has been admitted of record that witnesses would, if called, testify to and establish the averments of the respective bills of complaint in such suits in that regard.

Testimony in this suit to establish the fact of such demand upon the defendant railway company and its officers and managing directors, and their refusal to comply with such demand, may not be taken practicably within a reasonable time. For the purpose of avoiding delay in closing the testimony in this suit,

It is stipulated that the Complainant, William Shillaber, herein, ever since the year 1904, continuously has been and now is the owner and holder of more than fifty shares of the preferred stock and of more than fifty shares of the common stock of the Minneapolis & St. Louis Railroad Company; that witnesses, if so called upon, would testify that a similar demand was made in like manner and with like effect by said Complainant Shillaber upon the Defendant The Minneapolis & St. Louis Railroad Company and its officers and managing directors, and that said Railroad Company and its officers and managing directors refused to comply with such demand, in all respects to the same extent and with equal effect as has been testified in that regard and established in the case of Shepard vs. Northern Pacific Railway Company; and that no question will be raised by Defendants or any thereof as to the sufficiency of such testimony to establish facts with regard to such demand and refusal, to the same extent and with equal effect as such facts were established in the case of Shepard vs. Northern Pacific Railway Company, or as to the sufficiency of the bill of complaint herein so far as concerns the admissibility of such evidence.

It is further stipulated, that any and all the evidence offered and received, or which may hereafter be offered and received, in either of the suits above mentioned, insofar as the same or any part thereof may be applicable and material to the issues of this suit, may be read and considered in the determination of this suit to the same extent as if the same had been offered and received herein.

Counsel for Defendants offered in evidence statement entitled "Minneapolis & St. Louis Railroad, 'A' Minnesota Earnings from Report to State, Freight, Passenger, Miscellaneous, Intra and Inter," and same was marked Defendant's Ex. 15–Hillman.

FEDERAL BUILDING, St. Paul, Minn., May 18, 1910, the hearing was resumed before the Master at 2 P. M.

Mr. How: The Defendants file objections to what they claim to be the opening of the case—permitting Complainant to introduce further tables; and the first ground of their objection is that the case was closed as long ago as January 25, 1910, excepting that it was agreed that matters appearing in printed public records might be called to the attention of the Court upon the argument and then offered in evidence. I hope the Master recollects that the Minneapolis & St. Louis case never was closed. I stated, not less than six times, that there was some testimony still to go in, that I was not able myself to put it in, that it required Mr. Butler's attention, and that I would put it in if he did not, and it has always been understood that these tables would have to go in before the case was closed. It has taken a tremendous time to prepare them.

Mr. DURMENT: The Defendants object to the opening of the case and the permitting of the Complainant to introduce further tables or statements of figures prepared in the case of William Shillaber vs. Minneapolis & St. Louis Railroad Company, and to the further examination of the witness Scott, or any other witness, for these reasons:

1. The case was closed as long ago as January 25, 1910, except it was agreed that matters appearing in printed public records might be called to the attention of the Court upon the argument, and then offered in evidence.

2. On or about the 25th day of January, 1910, a time was fixed for the exchange of briefs between counsel and for arguing the case. That time has expired, as has also time subsequently agreed upon between counsel for that purpose. The record was printed, and, except for the index, completed in the month of February, and furnished to counsel for the purpose of making briefs upon the record then in. One of the briefs for Defendants

was printed and was delivered to counsel for Complainants at their request several weeks ago, and that brief was based upon the record as made up and printed. There was no suggestion upon the part of counsel for Complainants that they desired to put in these tables or any additional tables or evidence until the end of two or three weeks after the said brief for Defendants had been delivered to them.

3. These new tables or figures, which it is sought now to inject into the case, are with reference to matters concerning which and the bearing of which and the effect of the same upon the Defendants' case and the matters at issue, Defendants' counsel have to obtain their information very generally from an expert railroad acountant; also probably it will be necessary in order for the Defendants to test their accuracy and to get other information from the records of the Company necessary to show the true situation, not only as to these particular matters, but other matters which should be considered in connection with them, to have an examination of the books of the Company by an expert railroad accountant, which will require considerable time and expense. At the time when Complainant was putting in its evidence by Mr. Scott, and its figures which it deemed necessary for consideration in this case, Mr. C. W. Hillman, who was in the employ of the Defendants for the purpose of assisting the Defendants in the trial of this case, and who had examined the books and records of the Company to check the tables and figures presented by the Complainant, was present in St. Paul, where counsel could have the benefit of his services and advice as well as his examination of the figures. The last testimony given by Mr. Scott, the Auditor of the Minneapolis & St. Louis Road, on whom Complainant depends to establish the facts which it is now desired to put into the case and on whom the Complainants relied for the other tables as to earnings and income, was given on the 12th day of September, 1908. From that time until the 10th day of May, 1910, there

was no suggestion or intimation that the Complainants desired to offer any further evidence or any other figures. During much of the time in October, November and December, (and perhaps some of the time in January), Mr. Hillman was present in St. Paul and at the service of the Defendants for the purpose of investigating any of the figures, and could have examined into the matters which it is now sought to inject into this case, and could have made other examinations which probably it will be necessary for the Defendants to have made in case the testimony of Mr. Scott is to be further taken. He cannot be had at this time without some delay and considerable expense.

4. The tables or figures which have been produced to Defendants' attorneys by Complainant's attorneys, and which they say they desire to take the testimony of Mr. Scott to establish, upon the face of them are unfair and incomplete in so far as giving a fair exhibit of the business of the Company for the year 1907, in that the Table marked "D" simply purports to show the amount received in that year from intrastate business and the amount received from interstate business; and does not show nor give any information from which the volume of inter or intra state business can be determined, nor as to the rates of freight charged to make up the amounts so received.

5. If the Master opens this case and permits the Complainants to further examine Mr. Scott and to put in further evidence of this character, a time should be fixed such that Defendants may have Mr. C. W. Hillman present at the hearing to hear Mr. Scott's testimony and to advise them and to assist them in cross-examining him.

The MASTER: My recollection is that in the Minneapolis & St. Louis case if there was testimony that could not go in by stipulation, the right was reserved to either party to call witnesses; that it was substantially all in, but there were various tables and perhaps something in regard to values that would be offered, and I think the record will show something of that kind.

LEMUEL G. SCOTT,

recalled on behalf of Complainant, testified:

By Mr. BUTLER:

Q. A paper marked "Complainant's Ex. 33—Scott," consisting of four sheets, marked respectively A, B, C and D, is shown to the witness. The caption of Section A is as follows: "The Minneapolis & St. Louis Railroad Company (Entire System) Year ended June 30," and purports to show earnings from operation, operating expenses, earnings over expenses, taxes, earnings over expenses and taxes, other income, net earnings, for the years 1903, 1904, 1905, 1906, 1907, 1908 and 1909. Section B is under the caption, "The Minneapolis & St. Louis Railroad Company (Minnesota) Year ended June 30th," and purports to give the same information with respect to Minnesota as Section A with respect to the entire system. Section C is under the caption, "The Minneapolis & St. Louis Railroad Company, operating expenses—Minnesota, year ended June 30, 1907," and shows the same divided between passenger and freight, also the total, under four principal heads, as follows: Maintenance of Way and Structures, Maintenance of Equipment, Conducting Transportation and General Expenses. At the foot of this appears a note with respect to $90,047.90 account car per diem and mileage balance and $9,585.83 account hire of equipment balance. Section D is under the caption, "The Minneapolis & St. Louis Railroad Company, freight and passenger revenues for the year ended June 30, 1907," separated between Minnesota intrastate and Minnesota interstate. It shows the total freight and passenger, separated as above stated, and the percentage of each to the total; that is, the percentage of the intrastate freight and passenger taken to-

gether to the total of the percentage of interstate, of freight and passenger taken together.

The MASTER: Is the division of expenses between freight and passenger made in the same manner as explained in Mr. Scott's testimony?

Mr. BUTLER: Yes.

Q. Mr. Scott, did you prepare or cause to be prepared Complainant's Ex. 33—Scott at my request?

A. Yes, sir.

Q. Referring to Section A of that exhibit, I will ask you where the figures appearing upon that statement came from, where did you get them?

A. From the records of the Company.

Q. That is, the books and accounts of the Company kept in the regular course of business from year to year during the period covered?

A. Yes, sir.

Q. With respect to Section B of the same exhibit I ask you the same question.

A. The answer is the same.

Q. With respect to Ex. C.

A. Yes, sir.

Q. Now will you explain the meaning of the note at the foot of that statement. The note reads as follows: "The above checks with report to State except that in the report to the State $90,047.90 account Car Per Diem and Mileage Balance and $9,585.83 account Hire of Equipment Balance were credited to those accounts under Earnings, which increased Operating Expenses by $99,633.73, and divisions between freight and passenger which appear on books of the Company."

A. The classification of the Interstate Commerce Commission and of the State of Minnesota, as per the reports which the Company make to both, call for these two items that are mentioned in the note to be classified as revenues. The financial

exhibits and reports that the railroad company get out and issue to the excutive officers and are published classify these items under operating expenses. In this case the items were a credit and will so appear in the reports as issued by the railroad company. But, in preparing the reports to the Interstate Commerce Commission and to the State Commission, we have thrown the amounts over into the report to fit it in order that we can make the report to them as they desire.

Q. That is, as I understand it, in the one case, that is the case of your books, these credits such as are indicated in the note are subtracted from operating expenses, being considered a deduction or reduction of the total amount of operating expenses?

A. Yes, sir.

Q. Whereas the reports require that they be considered an addition to earnings, am I right about that?

A. The reports to the Commissions do, yes, sir.

Q. The net, however, would be the same, whether it was added to earnings or subtracted from expenses?

A. Yes, sir.

Q. The division of operating expenses on Section C between passenger and freight was taken from the books of your Company?

A. Yes, sir.

Q. And as already indicated in answer to a question from the Master the division was made on the basis that you have heretofore described in your testimony?

A. Yes, sir.

Q. And the division of operating expenses between freight and passenger is kept regularly in the course of accounting by your Company?

A. Yes, sir.

Q. And these are the figures taken from the books indicating such division?

A. They are.

Q. Section D is a division of the revenue, freight and passenger, between intrastate and interstate in Minnesota?

A. Yes, sir.

Q. And that covers the entire year of 1907?

A. Year ended June 30, 1907, yes, sir.

Q. When you were on the stand before it appeared that in the regular course of business your books were so kept as to erroneously include as intrastate certain interstate freight business, spoken of as the "error" very often in this record, so that your books for this year (for the year in question or for any year) do not show the correct division between intrastate and interstate freight earnings and freight revenue?

A. The reports to the State show that erroneous division, which of course is compiled from our records.

Q. Yes. Now how were the figures in this Section D of Ex. 33 arrived at?

A. By going through the freight and passenger business for the entire year ending June 30, 1907, and separating the interstate from the intrastate business.

Q. You still have the abstracts and way-bills necessary to make that revision or separation?

A. We have.

Q. The separation for the entire year was made or at any rate completed since you last testified in this case?

A. Yes, sir.

Q. The separations which were made and evidenced by the exhibits bearing your name already in evidence did not correspond with any fiscal year or with each other?

A. They did not.

Q. As to time?

A. They did not.

Q. But this statement Exhibit D is a complete revision of the complete year ending June 30, 1907?

A. Yes, sir.

Complainant's Ex. 33-Scott offered in evidence.

Mr. BUTLER: Mr. Carter, one of Mr. Scott's assistants, had to do with the preparation of Sections A, B and C, and he is here, and Mr. Smith had charge of the revision of the way-bills and station abstracts, and you will already recall, I think, that when this matter of revision was up before we brought over all of the working sheets for the periods covered by the exhibits heretofore introduced in evidence, and we have them with respect to this, and when I submitted these statements I asked that you familiarize yourself through your accountants with them. Everything we have is open to you (Defendants), of course.

Mr. DURMENT: There is no objection to the exhibit, then, with that statement.

CROSS-EXAMINATION.

By Mr. DURMENT:

Q. Now referring to Section D of your exhibit, Mr. Scott, this is for the year ending June 30, 1907, was there any particular reason for selecting that year?

A. No, sir, it was the year most convenient at the time the data was prepared.

Mr. BUTLER: It was the last year at that time?

WITNESS: Yes, sir.

Q. When did you begin preparing it?

A. It was shortly after the hearing, or at the time that I was here before.

Q. That was in September, 1908?

Mr. BUTLER: Yes, this revision was made right after he testified.

The MASTER: A year ago last September.

Mr. BUTLER: Whenever it was.

Q. Now there is nothing, then, unusual about the year 1907 that would induce you to take that year?

A. No, sir, there was not.

Q. You considered it fairly representative of other years, or succeeding years, and the two or three years prior to that?

A. It is better than the succeeding years. It is about an average for that year including the preceding years.

Q. Well, I don't quite understand being an average for that year including preceding years.

A. Well, I didn't mean that. I say it is about an average taking the year 1907 and adding to it the results for the four preceding years, but it is a better year than the two succeeding years so far as net is concerned.

Q. Yes, but so far as the gross how is it?

A. It is about an average year for the last five years.

Q. It is a much smaller year than the year 1909, isn't it?

A. So far as the gross revenues are concerned.

Q. I am speaking of the gross revenues, yes.

A. Yes, sir.

Q. A little larger than the gross revenues of the year 1908?

A. Slightly.

Q. And a little larger than the year 1906?

A. Yes, sir.

Q. You say that you took off from the way-bills of each shipment for that entire year every shipment as to state and interstate business?

A. Where it was necessary to refer to the way-bill, yes, sir.

Mr. BUTLER: The way-bills and abstracts.

Q. You took it off either from the way-bill or from an abstract?

A. Yes, sir.

Q. That was the agent's abstract?

A. Yes, sir.

Q. The agent's abstract would show the initial point of shipment and the point of destination always, would it?

A. No, sir.

Q. Would it ever show that?

A. Yes, sir.

Q. Well, would it usually show that?

A. Yes, sir.

Q. In what cases would it not show it?

A. Where the shipment would be rebilled at a junction point.

Q. In that case you would have to go to the way-bill?

A. Yes, sir.

Q. What would there be on the abstract to show that it had been rebilled, if it was of that character?

A. The advanced charges would indicate the fact that the shipment originated beyond the junction point.

Q. Yes, and then in every case where the abstract indicated that the shipment originated beyond the junction point you would go to the way-bills?

A. Yes, sir.

Q. It would occur, I suppose, that in a number of those instances they were still interstate shipments and a number that were intrastate shipments?

A. Yes, sir.

Q. What information, in making up your statements and in examining those statements, did you take off these agent's abstracts and way-bills?

A. All shipments where the indication that it was an intrastate shipment was treated as intra, and the same would apply to an interstate shipment.

Q. Yes, I understand that. You are certain you have got everything that was intra into the intra figures and everything that was inter into the inter figures and that there is no overlapping now, are you?

A. So far as you can depend upon clerical help to determine that information, yes sir.

Q. Well, of course, there may have been a mistake here and there, but if anything it is just the ordinary mistake that would be made in work of that sort; there is no class of business included in one of these figures now that ought to go into the other class?

A. No, sir.

Q. And did you collate any other information from these abstracts and way-bills than the information as to the amount received for shipments of intrastate freight and the amount received for shipments of interstate freight?

A. Revenue only.

Q. Revenue only?

A. Yes, sir.

Q. You didn't collate the tons or the ton mileage or the different kinds of commodities hauled, or anything of that sort?

A. We did not.

Q. And your company does not ordinarily keep separate on any record anything that will show the tons or ton miles of freight, as between inter and intra freight?

A. We do not.

Q. And you have made no figures on that for this year, for 1907?

A. We have not, so far as tons and ton miles are concerned.

Q. That could have been done along with this other work from the abstracts, couldn't it, and from the way-bills?

A. By devoting the additional time it could have.

Q. But all that information was contained in the abstracts and the way-bills which were examined?

A. Yes, sir.

Q. And it could have been collated at the same time the revenue was collated?

A. It could have, yes, sir.

Q. Why didn't you collate that?

A. Because of the time involved and the request that was made.

Q. What request do you mean?

A. By Mr. Butler.

Q. Well, you don't mean to say that he requested you not to do it?

A. No, he asked for the revenues intra and inter, and did not ask for the tons—well, I won't say as to that; possibly he did want it, but it is quite an expense involved and takes time to do it. At any rate, it was not done.

Q. Now what is included under the head Freight Revenue on this Section D?

Mr. BUTLER: You mean as between the carriage of freight and miscellaneous, and that sort of thing?

Mr. DURMENT: Yes.

Q. Does that include all the income of the road in Minnesota, or does it include simply the amount received in freight for hauling?

A. The freight revenue and passenger revenue only.

Q. That is to say, the freight revenue $534,696.66, Minnesota intrastate, is the freight charges for hauling the freight?

A. Yes, sir.

Q. And does not include any miscellaneous earnings or revenue?

A. It does not.

Q. And the same thing is true with reference to the Minnesota interstate?

A. Yes, sir.

Q. It is simply the charges for hauling the freight?

A. Yes, sir.

Q. And the passenger revenue, it is the charges for the hauling of the passengers, so much per mile, is that right?

A. For hauling the passengers only.

Mr. BUTLER: It does not include mail and the like.

WITNESS: No, sir.

The MASTER: Demurrage?

WITNESS: No, sir.

Mr. BUTLER: I think a distinction is made in the accounting between the word "revenue" and "earning," is there not? the revenue meaning what is indicated here, and the earning including the miscellaneous.

WITNESS: Why, it is just simply a change in terms that has been recently established by the Interstate Commerce Commission. Formerly, in all their statistical reports, they used the word "earnings." Now they have changed it to "revenues." That is the only difference that I know of.

Q. Well, I wanted to make that clear, that on this Table D you have included only that which was received for passenger fares on the passenger, and on the freight that which was paid as freight-carrying charges.

A. Yes, sir.

Q. And the miscellaneous income or other items of income or earnings which were not chargeable there would be added to this to make up the total income of the road, would it not?

A. Yes, sir.

Q. If I am not mistaken, your road reported to the Railroad & Warehouse Commission of the State for this year ending June 30, 1907, that the passenger revenue for Minnesota intrastate revenue was $506,427.79, and for interstate passenger revenue $143,839.01?

A. That is according to the report.

Q. Yes. Now, as I understand your testimony today, the difference between those figures so reported to the State and the figures given on this Section D is due solely to the fact that you included in the intrastate business in that report revenue that should have been credited to interstate business?

A. Yes, sir.

Q. The totals are the same?

A. The grand total—the total of the two is the same.

Q. The total of the two. Well, that is what I had in mind.

A. Yes, sir.

Q. Now that same year you reported to the State of Minnesota on the freight business that your receipts from intrastate freight (that is, the carrying charges for it) was $1,316,835.28, and from interstate freight $398,017.29?

A. Yes, sir.

Q. The total is the same for the year?

A. Yes, sir.

Q. But you have made the difference between that report and Section D because, as you claim, there was included in the report to the State as intrastate business a large amount that should be credited to interstate business?

A. Yes, sir.

Q. And that is the only difference between that and this?

A. That is the only difference.

Q. Now, turn to Section C. As I understand it, the $90,047.90 account car per diem and mileage balance and $9,585.83, account of hire of equipment balance, referred to in the note, are amounts which the Minneapolis & St. Louis Company received during that year for rent of its cars while on other lines and for hauling cars of others over its lines?

A. It is the excess that we received over what we paid during that year for rental.

Q. That is to say, that when your cars were hauled by another road did you pay for them or did you get rent?

A. No, just the opposite; whenever our cars were on foreign lines they paid for the use of them; foreign cars on our line, we pay them for the use of them.

Q. And what is the mileage part of it, that is the per diem?

A. That is per diem and the mileage; it is the same way. The only difference is the method of payment. In one case it

is a per diem payment, and in the other it is a per mile payment. The arrangement works the same way. It is only a difference in method.

Q. Then this $90,047.90 means that you have received for the use of your cars on other roads that much more than you have paid other roads for the use of cars, their cars?

A. Yes, sir, on our line.

Q. So upon the face of it it would appear to be an earning?

A. What is that?

Q. I say it appears to be an earning really.

A. Yes, a net collection.

Q. It is a net earning?

A. Yes.

Q. Now, I suppose that item of $9,585.83, account of hire of equipment balance is in the same way, is it not?

A. Same thing exactly, only that it differs to the extent that where you loan another road a locomotive or passenger car you collect, of course, on the per diem or the mileage basis. It is the same thing.

Q. Well, that means that the Minneapolis & St. Louis Road during that year got that much more money back for its equipment that it hired out than it paid to other roads for the equipment it had used belonging to them?

A. Yes, sir.

Q. And that would be, then, an earning or an income?

A. It is an income.

Q. It would not be an expense of operation?

A. No, sir; the Interstate Commerce Commission and the State now classify revenues or income of that kind as Income and not revenues or earnings.

The MASTER: That is, the gross amount so received went into the earnings, and then the corresponding amount paid out went into the expenses, is that it?

WITNESS: So far as our accounts are concerned we put it into expenses, in all cases, whether it was a net collection or a net payment, but the State and the interstate at that time placed it either in expenses or revenues according to which way the balance went. If it was a net credit collection they considered it as revenue, and if it was a net payment they considered it as operating expenses; but in our statements and reports we treated it the same all the time, regardless of whether it was a credit or a debit; that is, I mean from year to year. But the amounts now, under the present classification, are treated by the Interstate Commerce Commission and the State as income, neither a revenue nor an expense.

Q. If I understand it, as you made your report to the State for the year 1907, you charged in to your operating expenses, as part of the operating expenses, all the moneys which you paid or became obligated to pay to roads whose cars you hauled over your road?

A. No, sir, not in the report to the State. We handled the item as they wished it. We placed it in the revenues where they classified it.

Q. You placed the net in?

A. Yes, sir.

Q. But you didn't place the gross in?

A. Well, by placing the net in you place both the gross receipts and the gross payments.

Q. Well, I can't quite see that, and I want to get it clear. This $90,047.90 is that much money more which you received than what you paid or were obligated to pay for like services to the other roads?

A. Yes, sir; therefore, we placed both the payments and the receipts in revenues as the State asked for it by showing the net.

Mr. BUTLER: Debit or credit as the case may be.

Q. Then you simply treated the net balance as the item to appear in your accounts?

A. Yes sir, as the report calls for. On the revenue page they ask that you shall show a balance if your collections exceed your payments. On the operating expense page they ask that you shall show it as a payment if the balance that you pay out exceeds your collections.

Q. Yes, and hence because there was a net profit in revenue to your Company in that year it went into the revenue side of the report?

A. Yes, sir.

Q. But now what I want to know is this: Undoubtedly your books made some showing or kept some account of the moneys you paid or were obligated to pay for the other roads for their equipment and cars which you used and hauled, did they not?

A. We have an account into which we enter both the payments and the collections.

Q. Now then, in making up your accounts of cost of operation on your own books and in your report to the State, did you not include an item of the amount which you owe or became obligated to pay the other roads for this service?

The MASTER: The gross amount?

Mr. DURMENT: The gross amount, yes.

A. Well, in our record of transportation expenses into which that item was always shown, we entered it whether it was a payment or a credit; but in the report to the State we treated it as they desired.

Q. Yes. Well, I still think you haven't quite the point I have in mind, Mr. Scott. I will take a concrete example.

Mr. BUTLER: If you will just look at his answer, Mr. Durment, I think you will see it. If you will have that answer read, I think it comprehensively answers it, as they kept their books.

Mr. DURMENT: It may be too comprehensive for me.

The witness' last answer read.

Q. Well, what I have in mind, the natural course is this, and I am not quite clear whether it was that way under your answer or not; suppose there was a thousand dollars owed by your Company in the course of a year to other roads for these cars; now, if you didn't let them have any of yours, you would charge that as an operating expense.

A. Yes, sir.

Q. It would go into your general cost of operation?

A. Yes, sir.

Q. Now, as a matter of fact, however, suppose you had let other roads have your cars and equipment so that there was coming to you from the other roads $1,500, the net to you in striking a balance of both sides of the account would be $500; now that $500 in your report to the State you would charge or enter as a revenue?

A. Yes, sir.

Q. Now, on your own books, however, you would enter that that as a cost of operation, would you not?

Mr. BUTLER: As a credit.

A. As a credit to transportation operations.

Q. And that is all?

A. Yes, sir.

Q. Wouldn't you include in your cost of transportation also the thousand dollars which you had paid to them?

A. Oh, yes sir; they are both there, and whenever you enter a net amount in, you place both results.

Mr. BUTLER: Debit and credit.

WITNESS: Debit and credit, but as one item only.

Q. Now, does it not follow, then, that in the report you make to the State where you report it as revenue and also where you report your operating expenses you have included in the

operating expenses the thousand dollars as an operating expense?

A. No, sir. The illustration you gave we would enter in our report to the State the $500 only, which would be the net credit, and it would be placed under "Revenues."

Q. Yes, but would you deduct from your operating expenses? you would report to them the thousand dollars which you owed to the other roads?

Mr. BUTLER: But the other thousand would balance that. There is a debit and credit in this conduct of transportation.

A. In the report to the State the thousand dollars would not go into operating expenses.

Q. It would not?

A. It would not. In the report to the State the thousand dollars would go into revenues, and the $1,500 would go into revenues, leaving a net item of $500.

Q. Then the idea is, if the whole transaction were put out in figures, you would credit revenue with $1,500 and charge operating expense with one thousand dollars?

A. If it was required to report it that way, we would, yes sir.

Q. Well, I mean as your figures go in.

A. Our accounts on our books would show the complete transactions, of course, all debits and all credits; but in our reports that we would get out we would enter simply the net amount, but we would place it in expenses; whereas, to the State we have placed it in revenues under the illustration that you have given.

Q. Then your own books would not show any charge of the thousand dollars to operating expense?

A. In our books it would.

Mr. BUTLER: It would be a credit back, Mr. Durment.

Mr. DURMENT: Well, I suppose it is because I can't see it,

Mr. Butler. He hasn't made me see it yet, and I am trying to get it.

Mr. BUTLER: One balances the other, don't you see, a thousand in and a thousand out, and five hundred over.

Mr. DURMENT: That is all right enough.

Mr. How: He has credited operating expenses a thousand dollars and charged it with a thousand dollars.

WITNESS: On our books we have an account, of course, of car per diem and mileage, and to that account we post your debits and your credits. Now we carry that through from month to month and get a whole year, and in this particular case our credits foot up $90,000 more than the debits. Now, in the report to the State, as it calls for it, it wants those figures taken as a balance. In their page of operating expenses they don't ask that we shall place any. Now we will say it is $190,000, leaving the net $90,000; it doesn't ask that we shall put into operating expenses the $100,000 and into the revenues $190,000, but it says you shall take both those figures (your $190,000 and your $90,000) and carry into a balance. For instance, they might say debit so much and credit so much, and if the credits exceeded your debits you would carry out the balance as so much.

Q. Well now, I understood that, but what I am trying to get at is to make it clear to my own mind here that you have done that way, that you haven't simply carried your $90,000 excess into the revenue, but that—I mean that you have done that, but also that you haven't at the same time included the $100,000 in your operating expense.

A. We haven't of course the figures, no; it is simply the net result, and in our report to the State we haven't put the $100,000 into the operating expense and $190,000 into revenue. You see it wouldn't balance. If we had it that way, you couldn't bring out your results so as to balance. The report calls for a balance.

Q. When you make up on your own books the cost of conducting transportation you carry into that only the net balance of the car per diem and mileage balance, is that right?

A. We carry both, but of course we only place in our exhibits the net.

Q. Well, what do you mean by your exhibits?

A. The financial exhibits that we issue and publish and pass out.

Q. That may be, but on your books of account where you show your cost of conducting transportation what would be your entry in the case where the total figure was $190,000 and your net balance was $90,000? How would you enter that on your books of account where you keep account of the cost of conducting transportation?

A. The itemized account would show the detailed transactions, but when you get to the total of your transportation costs for the month or for any period, we would simply show the net.

Q. And then do you have another account into which that net is transferred?

A. No sir; it is a part of the cost of conducting your transportation.

Q. And then when you come to make a summary of the entire cost of conducting transportation for the year you would add up the various accounts, I suppose, to get that summary, and in that summary you would include only the net of this balance?

A. Yes, sir.

Q. On this account?

A. Yes, sir.

Mr. BUTLER: "Strike a balance" and use it.

WITNESS: Mr. Durment, that is true not only of this account but every account that enters into your transportation costs. You may run through every account we have under transpor-

tation expenses, all the items, and you will find that on our books we have debit items and credit items and then we have the net. Now if we should have a credit balance in that account through some discount or through correcting an error in the preceding month, we would carry that credit over in our report for the month as a credit item, letting the year show the result, but every item you have in transportation expense is liable to have both debits and credits before you arrive at the net result for the month.

Q. Then, when you make up your reports of the cost of operation for the State Railroad & Warehouse Commission for any year or for your own books, if you care to summarize it and get the grand total of it, you make a summary of the net balances to the various accounts?

A. Yes, sir.

Q. And that gives you what you call your total cost of conducting transportation during the year?

A. Yes, sir.

Q. Mr. Hillman, who was called as a witness by the Defendants in this case heretofore, produced an exhibit in which appeared as his Exhibit M, Section B, under head "Minnesota, operating expenses, report to State," and also "Company's books, freight and passenger, company assignment," showed for the year 1906-07 the items for cost of operation during that year, and testified, as I remember it, that they were taken from the books of account of the Minneapolis & St. Louis Railroad Company; they were divided between freight and passenger, and he testified that they were divided as shown on your books.

Mr. BUTLER: He took the division of this Company between freight and passenger, I think.

Mr. DUMENT: Yes, he did.

Q. Now, I notice here that the items for maintenance of way and structures agree; the items for maintenance of equip-

ment agree; the items for cost of conducting transportation differ.

Mr. BUTLER: How about general expenses, Mr. Durment?

Mr. DURMENT: Well, they differ too, some. No, they agree.

Mr. BUTLER: Now that is just the difference that is explained in the note.

Q. Now there is $321,506.28 for passenger and $702,984.23 for freight. That difference is due solely to the different disposition made of this $99,633.73 shown in your note to Section C, is it?

A. Yes, sir.

Q. Now your Section B: This is the table. I call your attention to the year 1909. What differences between the figures shown in this Section B of your exhibit in the 1909 column from your report to the State Railroad & Warehouse Commission for the year for the same heads? For instance, your earnings from operation here are given at $2,480,303.88; what did you report to the State?

A. They seem to be the same.

Q. Do you know? How is it with the other figures in that column?

A. The earnings appear to be the same. Operating expenses differ.

Q. Now will you please state how much the difference is and which way?

Mr. BUTLER: And how it arises.

Mr. DURMENT: Yes, and how it arises.

A. Operating expenses differ in the sum of $165,993.04. The expenses as reported to the State of Minnesota are greater than those shown in Section B by that amount.

Q. Now go on and tell us where the difference comes in.

A. The operating expenses, as per Section B, are arrived at on the same basis as the expenses for the preceding years; and these we allocate wherever we can, wherever possible, and

POOR COPY

such items as cannot be allocated are divided among the states upon average per cents derived from the use of train mileage and car mileage, which is covered in previous testimony given. But the report to the State of Minnesota instructs that all operating expenses in Minnesota be divided on basis of train mileage.

Mr. BUTLER: Train or track?

WITNESS: Train. Therefore the figure as given in the report to the State are the proportion assigned to Minnesota according to the train mileage within the State as compared with the train mileage for the entire line.

Mr. BUTLER: And would be higher than the figure given on Section B by how much?

WITNESS: $165,993.04.

Q. Then, as the railroad company figures, the cost of operation for the year 1909 in Minnesota was $165,933 less than under the instructions from the Railroad & Warehouse Commission they were required to report it?

A. Yes, sir.

Q. And that makes the difference?

A. Yes, sir.

Q. That would make the difference between earnings over expenses, then?

A. Yes, sir.

Q. That difference there?

A. That explains the difference there.

Q. There would be no other difference than that?

A. No, sir.

Q. Now as to taxes: On what basis do you compute your tax for the year 1909?

A. Taxes actually paid would be on the four per cent basis, but in writing up taxes on our books from month to month we approximate the results. Therefore these figures on this statement (on this statement, Section B,) would be the taxes

as approximated during the fiscal year ended June 30, 1909, plus any adjustments that may have been made during that period for any calendar year as between the approximated and actual taxes paid.

Q. Well, your road pays a four per cent gross earnings tax, doesn't it, in Minnesota?

A. Yes, sir.

Q. Now, your gross earnings, upon which it pays the taxes, is $2,480,303.88, isn't it?

A. That is what we would actually pay on, yes, sir.

Q. Now, what would 4 per cent of that be?

A. It would be $99,212.15. We charge up $103,048.45 on Section B, which would be a difference of $3,836.30.

Q. Well, now, will you explain again just how that difference arises? As I understood you, it was a matter of bookkeeping and not actual cash paid that year.

A. It is entirely a matter of bookkeeping. Our taxes are paid on the calendar year basis. Therefore, you never can fit your fiscal year's results in with the actual taxes paid, on account of your basis, because we estimate the taxes as they accrue from month to month during the calendar year.

The MASTER: That is, you spread them over each month of the year?

WITNESS: Yes, sir.

The MASTER: A portion of each month of the year.

WITNESS: Each month of the year. Then, if we find we have over-approximated, we will deduct in the entry that is made for the month when the difference is discovered or located.

Q. Then I suppose it is simply this, that in one fiscal year you may pay more tax than was really due on that fiscal year's business?

A. We may accrue more taxes on our books than what the results would show we would actually pay.

Q. But in the next year you would lessen the amount, you would accrue a sufficiently less amount to balance it, wouldn't you?

A. Yes, sir.

Q. That is to say, in spreading out your taxes year after year under your system in one fiscal year you might pay more taxes than would be due on the earnings in that fiscal year or charged up on your books?

A. Yes, that is right.

Q. In the next or another, you might charge up on your books less than was due?

A. That is correct.

Q. But over a course of years the actual expenditure would be the equivalent of 4 per cent upon the gross earnings?

A. Yes, sir.

Q. Now the earnings over expenses and taxes, that is simply found by subtraction from the previous figure, isn't it?

A. Yes, sir.

Q. And this Other Income, that $63,306.06 for Minnesota, what is that?

Mr. BUTLER: The note shows, doesn't it?

WITNESS: The note would explain all that has entered into that.

Q. What I wanted to get at is this: Does that $63,306.06 include the same matters, or any of the same matters, as were included—not the same but similar matters as were included in the $99,000 item in 1907, that car per diem and mileage or hire of equipment and so on?

A. No, sir.

Mr. BUTLER: How about hire of equipment?

Mr. DURMENT: Well, that is what called for my question. I see Hire of Equipment is here and Rentals, which might cover the same things.

WITNESS: There is one item, hire of equipment, which pertains to the years ending June 30, 1908 and 1909, only.

Q. What equipment does that refer to?

A. That is all the equipment.

Q. Is that the same class of items as is referred to in your note to Section C?

A. Yes, sir

Mr. BUTLER: Does it include both those items, or only the $9,585.83 item?

WITNESS: It includes all equipment, rental, freight and passenger locomotives, everything.

Q. That you paid?

A. And collected. It is the net.

Q. This is again the net of Hire of Equipment?

A. Yes, sir.

Q. Does it include Car Per Diem and Mileage balance?

A. Yes, sir.

Q. This does?

A. Yes, sir.

Q. But in the years 1903, 1904, 1905, 1906 and 1907 this rental and hire of equipment is not included in that item?

A. No, sir. That is hire of equipment only, not rental. Rental never has been.

Q. It says here this includes rentals.

A. I mean so far as the operating expenses are concerned.

Q. We are referring now to Other Income.

A. Well then, I guess I misunderstood your question.

Q. I am referring to this column here, Other Income. Next to the last line in the column under 1909 is the item $63,306.06; that is starred?

A. Yes, sir.

Q. Now, that includes, as I understand you, the same class of items which in the year 1907 were included in the $99,633.73 referred to in your note to Section C?

A. Yes, sir.

Q. And others, too, so far as that is concerned?

A. Yes, sir.

Q. It includes those and other items?

A. Yes, sir.

Mr. BUTLER: Now, Mr. Durment, prior to the two last years, how are those same items handled on Section B?

WITNESS: In operating expenses.

Mr. BUTLER: Yes. So the change was effected at the end of 1907, June 30th, fiscal year, the change of method?

WITNESS: Yes, sir. That is when the present classifications of the Interstate Commerce Commission went into effect, on July 1, 1907.

Mr. BUTLER: Yes, they are in evidence here.

Q. Now, did the Company not have other income in the year 1909 which is not shown under this head "1909"?

Mr. BUTLER: That is shown in the note.

A. That does not include interest on investments, dividends on stock, interest and exchange.

Q. Now will you tell us what the Company's income received in the fiscal year ending June 30, 1909, from interest on investments, dividends on stock, interest and exchange amounted to? and explain the nature of each of the items.

A. For the entire line, or for the State of Minnesota?

Q. Both.

A. $65,788.75. That is for the entire line.

Q. Explain what they are.

A. That sum consists of interest on investments which total $66,569.97, and is composed of interest accrued on the Company's bonds that they hold in the treasury, the interest on which to offset is included in the charges to interest on bonds, which results are not in this statement. It also includes —the exact sum I am unable to give from the sheets that I have here—the sum that has accrued through interest on

the Company's bonds; and the same would be true of interest that we collect on bonds of the St. Paul Union Depot Railway Company which we own, which sum would be in the neighborhood of $4,000, because we collect 4 per cent upon the stock that we own, which aggregated $100,000 approximately.

Mr. BUTLER: Is it stock or bonds in the depot company?

WITNESS: Stock.

Mr. BUTLER: And how about the Transfer Company?

WITNESS: And the Minnesota Transfer Railway Company, also the interest that we collect on their bonds, would be in this same sum. And then we own some second mortgage bonds of the Des Moines & Fort Dodge Railway, which is a subsidiary line. The interest on those bonds would be in this same sum, but the charges that accrued upon the same bonds would be charged to interest on outstanding bonds, and the interest on the outstanding bonds is not in this exhibit, Section B. There is included in this same sum dividends collected on stock of the Company, which is held in the treasury, to the extent of $1,830. It also includes the net payment for interest and exchange that was made during the year, of $2,611.22. I was going to say that I can make an answer and be within $20 of the figure, but if you adjourn now until tomorrow morning I can give you the exact figures that enter into the sum that is under question.

Adjournment was here taken until Thursday, May 19, 1910.

FEDERAL BUILDING, St. Paul, Minn., Thursday, May 19, 1910, hearing resumed at 10 A. M.

LEMUEL G. SCOTT,
recalled for further cross-examination, testified:

By Mr. DURMENT:

Q. Referring to Section C, I am not sure that I have that straight in my mind this morning, I thought I had it so last

night—that really is an earning, that $99,633.73 mentionel in the note; that is the excess of your earnings of a certain class over what you have got to pay for like items to other roads?

A. Yes, sir.

Q. In the report to the State it was carried as an earning?

A. Yes, sir.

Q. And not as a cost of operation?

A. It was not.

Q. But the item itself was included in the figures that were reported to the Railroad & Warehouse Commission as Cost of Operation?

A. No, sir.

Q. It was included in your report to the State, both as an earning and as a cost of operation, was it not?

A. No, sir.

Q. Then it was simply an earning and not a cost of operation, was it?

A. The net result was reported as a revenue on the revenue page.

Q. And was not included in the report of the cost of operation?

A. It was not.

Q. Then why do you deduct this on Section C from the operating expenses? You say here that this would correspond to the report to the State except that you have deducted this item of $99,633.73 from the cost of operation.

A. There is no special reason why we handled those net results in with the operating expenses other than our detailed records and our accounts are so kept and issued. It was included in them in that way, and further, that it did not affect the net result.

Q. That is, by taking it away from both it wouldn't make any difference in the net result, you say?

A. Your net revenues in excess of operating expenses will not be affected either way that it is handled.

Q. Is there any other place in this Exhibit 33 in any of the tables where you have included this $99,633.73 as an earning?

A. No, sir.

Q. Is there any other table in the case, presented by your company, which shows it as an earning?

A. No, sir.

By Attorney General YOUNG:

Q. If this does not affect the result, Mr. Scott, why do you want to put it in at this time? Why do you want to put in this new table which changes the tables?

Mr. BUTLER: I asked that that be put in, General Young. I don't know that Mr. Scott knows anything about it.

Attorney General YOUNG: Well, you are not under oath, and we couldn't ask you the question.

Mr. BUTLER: I would just as soon answer it.

A. Repeat the question, please.

Q. Why do you introduce this exhibit at this time to change the figures and the computations that have been made on the figures heretofore furnished by your company, if it is true that it makes no difference?

A. By request of Mr. Butler these additional tables were compiled.

Q. Didn't you have any purpose in view in preparing this table?

A. I had none.

Q. Do you know how that change of figures is going to affect the computations that have been made on your former testimony?

A. I don't think it will affect them at all. The results are for a different period entirely.

Q. And you want to be understood as saying, then, that after this record is all printed and the computations made and

TORN PAGE

the argument of counsel prepared, that you want to introduce a table here drawn in a different way, which, in your opinion, makes no difference, do you?

A. It will make no difference as to what?

Q. As to any of the bases of computation made with reference to your company and its earnings.

A. I don't see that it will affect anything that has been heretofore presented at all.

The MASTER: Because it is of a different period?

WITNESS: Yes, sir.

Q. Well, it is important, isn't it, that the Master and the Court know what the gross income of your road is in this State?

A. This table would clearly give all that information.

Q. Well, you say the table was prepared for the purpose of taking out of the record $99,000, which is in fact an earning of the road?

A. No.

Mr. BUTLER: No, it is carried as an earning here, General Young.

Q. And that there is no other table in the case anywhere in which it appears as an earning of the road?

Mr. BUTLER: Well, just wait a moment. We submit that is not what Mr. Scott has said, in substance or effect.

Attorney General YOUNG: Well, he has said, hasn't he, that the amount instead of being credited to earnings was taken out of operating expenses so that the balance would be the same?

Mr. BUTLER: The balance is the same, and the data are here and can be used in any way. I think that the record does not show heretofore this period covered, General Young, for the fiscal year. That was the point, that it could not at the time that the testimony was prepared heretofore have been covered for this year.

Attorney General YOUNG: Well, your tables heretofore covered to April 30th, and then you had a two-month period

added on as an addenda, which carried it to June 30th.

Mr. BUTLER: Yes, the revisions, etc., were commenced, and the year could not be finished, as I recall it, at that particular time.

Q. Table C is not intended to affect the result at all?

A. No, sir.

The MASTER: For instance, demurrage and matters of that kind would be miscellaneous earnings?

WITNESS: Yes, sir.

The MASTER: But this does not belong to that class at all?

Attorney General YOUNG: I know.

Mr. BUTLER: The only purpose was that this should be in one place and in a convenient place, because the tables heretofore did not fit the fiscal year, and at the time of the preparation of that there was a reason for it, I don't know now just what it was, but I think I do. We have always had a good deal of trouble about this error, and at the conclusion of Mr. Scott's testimony, whenever that was, I asked that this work be completed for a year so that there would be an end of that chapter. We had not then agreed among ourselves, as we have by acquiescence since the specimen months were made, and I said, let that be a year, and Mr. Smith with his men did it, and by letter to Mr. Scott of old date, furnished him those figures, and when I handed them to Mr. Durment I asked that Mr. Yapp go over it. Here are the way-bills, here are the working sheets and here is the whole thing, and these others were put in merely for convenience of everybody. I don't think they changed a figure. If they did, it was not intended. That is true. That is just it, because if you will take the exhibits as they are in, Mr. Durment, you will have trouble to fit to a fiscal year to a reported year, and the revision of this intrastate business, as shown by the exhibit (14-A-Tittemore is one of them), only applies as to the commodities covered by the rates attacked here. There are other commodities where this same

error came in, like brick and coal and cement, and commodities you know, that would get in there the same way.

Attorney General YOUNG: As to which no rate is prescribed

Mr. BUTLER: As to which no rate is in controversy here but still it would mingle with this interstate and intrastate error all the time.

Mr. DURMENT: I have a little different idea from what you have, if I understand you. As I understand it, the table 14-A–Tittemore, which was a final correction of Exhibit 14–Scott—

Mr. BUTLER: Well, it gives more detail.

Mr. DURMENT: I observed, in making the corrections for the periods covered, that was simply a table of tonnage and losses, not of income, continuing the true distinction between interstate and intrastate freight all the way through.

Mr. BUTLER: As to the commodities in question.

Mr. DURMENT: Well, as to all, because it covered those affected and those not affected.

Mr. BUTLER: No, because it takes the commodities, and then certain of those commodities were affected and certain not affected, but it didn't take commodities covered by rates not in question. Now, that is what that exhibit shows.

Mr. DURMENT: My understanding was different from that, that there was nowhere in your evidence any table which undertook to give the revenues from operation upon the correct basis between inter and intra. You reported to the state intra revenue and inter revenue, which showed a very large balance in favor of intra, and you put that in, so that there was no evidence in the case showing complete revenue for any period properly divided as between inter and intra.

Mr. BUTLER: Well, it showed the revenue as to the commodities in question, divided for the periods covered, but not for the other commodities. That is the way I understand it.

Q. Calling your attention to Section D of this exhibit, subdivision D of this exhibit is intended, is it not, to show what you

claim to be the total freight revenue earned by the company on Minnesota intrastate business and on Minnesota interstate during the year ending June 30, 1907, and the same as to passengers?

A. Yes, sir.

Mr. BUTLER: Not including miscellaneous I suppose that means, doesn't it? What do you mean by "revenue"?

Q. Have you in any other exhibit assumed to divide the miscellaneous earnings, so-called, between intra and inter state?

A. No, sir.

Mr. BUTLER: Well, have you in that exhibit?

WITNESS: Not the miscellaneous, no, sir.

Q. Well now, a portion of this division made by you on freight revenue has been made arbitrarily, hasn't it, and some of it has been allocated, no doubt, to the State, but now we are talking about the revenues.

A. Yes, sir, the expenses would be.

Q. These are practically all allocated. The record shows from what source they were derived. Well now, the car mileage and per diem balance, being a credit, is an earning of freight when it relates to the use of freight equipment, and it is an earning in the passenger department when it relates to the use of passenger equipment, is it not?

A. I should not think so. It is a return in the way of an interest on your investment.

Q. Why, it is an earning arising out of the use of your equipment, isn't it?

A. It is the rental that we collect from other lines for use of our equipment.

Q. Yes. Well, now, if you deliver a loaded car to another company at some junction point, to be carried by that company to its destination, you get remuneration from the company that does the hauling for the use of that car?

A. During the time that they have it, yes sir.

Q. During the time that they have it, yes. Now then, that is an earning by your company out of the use of its equipment; that is just as much an earning, is it not, as if you had hauled the car yourself to its destination?

A. I should think not. The Interstate Commerce Commission class such returns now in their classification as an interest really on the investment, treat it as an income and not as a revenue.

Q. I don't know that there is any constitutional provision saying that the Interstate Commerce Commission know all about this subject. I presume, however, that they know a great deal about it, but irrespective—

Mr. BUTLER: Well, we deny that.

Q. Irrespective of any rule, isn't it true that it is in fact an earning out of the use of your equipment?

A. It is a return for the use of your equipment. I don't know as you would want to class it really as an earning.

Q. If that earning for car mileage and per diem were entered up as an earning instead of as income it would be neessary, would it not, to apportion it between intra and inter state, or, in other words, it would be fair to apportion it, wouldn't it?

A. I don't see how you could very well, because your income is derived from the use of your cars off your own line and would have nothing to do with either intra or inter state shipments.

Q. But, as a matter of fact, it is an income derived from the use of the equipment which is employed by you, miscellaneously, as it might be said, between interstate and intrastate business?

A. Why, I should think not.

Q. A car might pass into the hands of another company in order to reach its destination if it was employed in carrying intrastate business, might it not?

A. Yes, it could, but it would be a very small portion of the rental if figured in that way, because a large portion of our mileage is within the state of Minnesota and any deliveries that we make to other lines would be more than likely out of the state or that the car would be hauled out of the state.

Q. There is no absolute rule upon that, the law of this state requires you to transfer cars to other companies at junction points, does it not? and you frequently do so.

A. Yes, sir.

Q. The United States Supreme Court held that you had to do so in a case taken up by your company, I believe, did it not?

A. I don't recall the case.

Q. Yes, the case of Jacobson against the road.

Mr. BUTLER: That was the Willmar & Sioux Falls.

The MASTER: Doesn't the repair and maintenance of those cars enter into the operating expenses of the road?

WITNESS: Certain of them, yes sir. There are certain expenses that the owners are responsible for; others must be assumed by the line using the car.

The MASTER: Well, if they appear in the operating expense, why shouldn't they appear in the revenues as well? That is, if the expense of operation is increased as to those cars which are so rented out, then why shouldn't the revenue received for those cars be included in operating revenues?

WITNESS: Well, at the same time the home line must assume the cost of repairs, or a certain portion of them, to the cars of other lines that are on their rails. It would be an ideal situation if all roads could keep on their own rails their own equipment, but that being impossible, some basis must be arrived at for the assuming of the expense of maintaining the equipment; and it is a question of evening up the cars that you are using on your own line and the cars that other lines are using. Now, the Interstate Commerce Commission must

have gone into that question very thoroughly, for they have finally decided that the returns (I might add, net returns) must be entered up as an income item.

Q. Well, Mr. Scott, under that method of bookkeeping does the business in the state of Minnesota get any credit for the earnings of your road out of this item of income that you now refer to?

A. Minnesota is credited with its proportion of the rental income, yes sir.

Q. Well, do your exhibits in this case show what proportion of the income from that source is credited to the intrastate business of Minnesota?

A. Not on Section D, no sir.

Q. Well, do they anywhere?

A. Yes, sir.

Q. Where?

A. Section B.

The MASTER: That starred item?

WITNESS: Yes, sir.

Q. Well, there is nothing on Section D which refers to intrastate business, is there?

A. No, sir.

Q. Well, that is what I asked you, whether the intrastate business of Minnesota gets any credit under this system of bookkeeping for any portion of the earnings from car mileage and per diem and items of that kind.

A. Why, if you make a subdivision of all your revenues as between intra and inter state, I should say yes.

Q. Well, wouldn't it be necessary in order that the facts be before the Court that there should be a division made on some proper basis of income of that kind as well as income from the use of the equipment on your own line?

A. Well, it could be made.

Q. It isn't proper that all of that income should be credited to interstate business, is it?

A. No, I should think not.

Mr. BUTLER: It should be regarded as part of the business within the state.

WITNESS: Yes.

Mr. BUTLER: And on the system.

Mr. DURMENT: And like all other overhead earnings, it ought to be divided on some proper basis.

Mr. BUTLER: Well, the bases are all in there, the revenue is in there.

Q. So that Section D as it stands could not be taken by the Master or the Court as a basis of income, that is, as a showing of the complete income of the road on its intrastate freight or passenger business?

A. No, I don't think so.

The MASTER: But as a matter of fact, the tables do show the interstate revenues and include a proper proportion of this other income which is designated here in Table B?

WITNESS: Why, the returns can be worked out to that extent, yes sir.

The MASTER: Well, I know, but in your report of revenue, interstate and intrastate, has that distinction been made and has the interstate revenue received a proper proportion or proper credit for any portion of those items mentioned or covered by other income?

WITNESS: I have never entered any exhibit that would show that information.

Q. In the reports to the State made by the Company each year, intrastate revenue has been credited with a very considerable amount from these items?

A. No, Mr. Durment, that is wrong.

Mr. BUTLER: There has been no exhibit introduced in the case, or in any case before your Honor, that I now recall, at-

tempting to apportion any miscellaneous earnings between intrastate and interstate; the miscellaneous earnings are included in the totals within the state. Now, those miscellaneous earnings are made up from a great multitude of items, and we have many data before your Honor and some time I expect to suggest to your Honor the various possible ways that miscellaneous earnings may possibly be worked out.

The MASTER: Mr. Hillman had something to say about that, I believe.

Attorney General YOUNG: Mr. Hillman makes the division, they do not. That is what I want to show.

Mr. BUTLER: I don't know that we have any quarrel with his particular division (I can't remember just what it was), with respect to Miscellaneous. Your Honor is familiar with how it has been dealt with by other courts.

The MASTER: But this rental is not Miscellaneous?

Mr. BUTLER: It is included in the Miscellaneous, and it is shown. I am right about that, am I not, Mr. Scott?

Attorney General YOUNG: No, that is included as a distinction that he made.

Mr. BUTLER: Well, it is included as Other Income, and Other Income includes Miscellaneous.

Attorney General YOUNG: Well, that can't be true, because if it were, your item here is wrong.

Mr. DURMENT: Well now, we are going to get those particular items in that particular exhibit later; we have just reached it and we will show just what was there.

Attorney General YOUNG: I would like to call attention to just one item there now. The item omitted on Section C was $99,000 for car mileage balance for 1907. Now, the total other income for that year on Section B is shown as $94,514, and that includes certain interest. I don't understand how those things agree.

Mr. BUTLER: Does one relate to the whole road and the other to the state of Minnesota?

WITNESS: Yes, it does.

Mr. BUTLER: You see Iowa and South Dakota would also be concerned in all of those common items.

Attorney General YOUNG: Yes, they both relate to the same subject.

The MASTER: This is headed "Minnesota."

Mr. BUTLER: Well, we have the figures here; analyze them. If there is any error, I want it found out.

Q. So far as you have returned miscellaneous earnings at all, Mr. Scott, you have returned them for the whole state, that is, for the intrastate business and the Minnesota interstate and have made no division of them?

A. Yes, sir.

Q. It has been suggested that I call your attention to an apparent discrepancy between the miscellaneous income in 1907 and the item appearing on Section C as an income from car mileage and per diem balance for that year, and that you ought to explain that discrepancy now. I will give you an opportunity to explain it, and you may do so.

A. I wish I was prepared to, but—

Mr. BUTLER: As I recall it, in your direct examination you stated with respect to Section B that a change in the method of handling the equipment hire balances and the per diem took place at the end of the year 1907. Now, does Section C put it on one basis and Section B on another?

WITNESS: You are correct. The $99,000 is not any part of the $94,000 at all, and I have so testified. The $99,000 is a part of the operating expenses and we have covered that.

Mr. BUTLER: Subtracted from the operating expenses in Section B?

WITNESS: And now commencing with 1908.

Mr. BUTLER: And in C it is in the revenue, and the Other In come in B is from other sources and should be regarded o the same basis as an addition to the $90,000.

WITNESS: But what I was going to state was, you asked that we work up certain data last night. Well, we worked until the lights went out, we finished up two years, 1909 and 1908, but we didn't get to 1907. So far as that question is concerned, the $99,633.73 is not any part of the $94,514.42 reported as Other Income on Section B; it is a part of the returns as shown for operating expenses.

The MASTER: I think you explained that yesterday afternoon.

WITNESS: Yes, sir.

By Mr. DURMENT:

Q. Now, there is one other thing that comes up here that has been muddled up a little, that I want to make clear. Will you take the report of your road to the state of Minnesota for the year 1907 and turn to page 35. Do you not find that that page is divided into two parts, one being a report of the intrastate business and the other being a report of the interstate business accruing to the state of Minnesota?

A. Yes, sir.

Q. On the right-hand half of that sheet are entered the reports of earnings and deductions for the interstate business?

A. Yes, sir.

Q. And on the left that which the road assigned for intrastate business?

A. Yes, sir.

Q. Do you not find that on your report to the State Railroad and Warehouse Commission in that year you credited this $90,047.90 car per diem and mileage balance to intrastate business?

A. It is so entered.

Q. And is not like entry made for the hire of equipment balance, $9,585.83?

A. Yes, sir; it is an error, though.

Q. Well, that may be an error or not, but haven't they done that right straight through year after year?

A. I don't know just how long this form of report has been prepared.

Q. You take the years 1905-06, 1906-07, 1907-08 and it is true, is it not?

A. Those figures represent the entire—

Q. Answer my question.

A. —revenue accruing to the state of Minnesota.

Q. Answer my question, please. I am asking you about your reports.

The question was read and added to as follows: That these items were carried as they were in the report just referred to.

A. The total returns are so entered.

Q. And for all those years?

A. Yes, sir.

Q. Now, will you turn to your report to the Railroad and Warehouse Commission for the year 1909 and show us where returns of similar items to those referred to in this note to Section C are reported in that report?

A. If you will turn to page 41, you will find entered under "Deductions from Gross Corporate Income," against Item A, "Hire of Equipment Balance," (page 79), $1,279.01.

Q. What does that mean, please?

A. That sum represents the payments made by the Company during the year ended June 30, 1909, in excess of the receipts during the same period, for hire of equipment.

Q. That is for hire of equipment? That would be in the same class of items as was included in your report ending June 30, 1907, in the item $9,585.83, would it? That is the balance

on the same account of which the balance was the other way in 1907 of $9,585.83?

A. That is one of the items; it would also include the $90,047.90.

Q. It would?

A. Yes, sir.

Mr. BUTLER: The whole balance was the other way in that year?

WITNESS: Yes, sir.

Q. Now, that is the only charge in the year 1909 you find? Is that entered with reference to the income of the entire line or for the state of Minnesota?

A. That has reference to the net income for the entire line.

Q. That is, that part of your report?

A. Yes, sir.

Q. Now, will you turn to page 45; you find entered there Operating Revenue of the State of Minnesota, don't you?

A. Yes, sir.

Q. On that page under head "Revenue from Operation Other than Transportation" I find "Car Service $6,994.37." What does that mean?

A. That means demurrage charges; it is not car rental, it is charges for use of cars at stations.

Q. Then, it is not a matter of per diem and mileage?

A. Not at all.

Q. Was any part of this $90,047.90 in 1907 switching charges?

A. No, sir.

Q. Then beginning with the year 1909 you drop out of your form of report to the State the items Car Per Diem and Mileage, do you not?

A. Beginning with the year 1908 we do.

Q. In your report to the State in the year 1908 you included it, didn't you?

A. I think not.

Q. You just said that you did, and credited it to interstate.

A. In 1907. I made a mistake as to the date of the change in the form of report. Mr. Yapp could answer that.

Q. I don't care anything about that. I am asking about the report as you actually made it.

A. Well, that is what I mean.

Q. You have got your report there and you have already answered, unless I am mistaken, that you did include it in the 1908 report.

A. No, sir; the forms of report for 1908 and 1909 are the same, and the hire of equipment balance is not entered in either report on the revenue pages.

Q. Show us on your report for 1908 the entries made for items similar to those included or referred to in your note in Section C.

A. If you will turn to page 39 you will find entered under Other Income–A—"Hire of Equipment Balance, $28,081.63."

Q. That is the only entry in the report of that year including this car per diem and mileage and hire of equipment?

A. Yes, sir.

Q. That includes both those items?

A. Yes, sir.

Q. Does that report for 1908 contain any entry in the operating revenues of the state of Minnesota covering any part of this $28,081.63?

A. It does not.

Q. That is, until the change of form of the report, the first of which was in 1908, your company reported these car per diem mileage balances and hire of equipment, or at least some part of them, to the state of Minnesota as intrastate freight revenue in its reports?

A. The report was so compiled, yes sir.

Q. But since that time they have been reported not as an operating revenue, but as a part of the general income of the entire system?

A. As part of the general income, yes sir.

Q. For the entire system?

A. Yes, sir; the report does not call for the income pertaining to the state of Minnesota.

Q. Well, I may suggest that I didn't mean by any of my questions to insinuate that there has been a modification by the road of its position or its report, but there are two different classes of reports; up to 1908 one form was prescribed, after that another form was prescribed?

A. Yes, sir.

Q. The form prescribed in 1908 doesn't carry the items Car Per Diem Mileage Balance as formerly or in the Minesota report of the Minnesota separate business; before that it did?

A. Yes, sir.

Q. You have simply complied with the requirements of the form in each case?

A. Yes, sir.

Q. When we adjourned yesterday we were discussing the item Other Income in the year 1909, $63,306.06 on Section B of Exhibit 33; you said, I believe, that that included rentals and hire of equipment, the same class of items as car per diem mileage balance and hire of equipment, but did not include interest on investments, dividends on stocks, interest and exchange?

A. Yes, sir.

Q. It appears also from your testimony in the direct that on that Section B under the head of Other Income up to and including the year 1907 the income or the figure for earnings and operation included the car per diem mileage and balance and hire of equipment balance referred to in your note to Section C?

A. Yes, sir.

Q. But for the next two years that was not included?

A. It was included.

Q. Not in 1908 and 1909?

A. It was included in the item Other Income for 1908 and 1909.

Q. But not in the first earnings from operation?

A. Not in operating expenses.

Q. It was excluded in the years 1903 to 1907 from the figures showing the other income?

A. Yes, sir; [illegible] part of operating expenses.

Q. You were to analyze for us this morning that $63,306.06 and show us just what it includes and how you came to get it.

A. It includes all income, as the note on the section indicates, with the exception of interest on investments, dividends on stock and interest and exchange. The interest on investments for the year ending June 30, 1909, credited to the state of Minnesota was $37,324.64; which sum is divided into three items: $4,143.99 represents dividends received from the St. Paul Union Depot Company, which amount in full was credited to Minnesota; also $6,673.97 interest collected from the Minnesota Transfer Company on bonds of that company owned by and held in the treasury of the Company, which sum was also credited in full to the state of Minnesota; the third item is $26,506.68, representing interest accrued on bonds of the Company's issue which are held in the treasury and not sold. Dividends on stock credited in this Section B, amount to $1,096.90, which represents dividends that the Company retained on stock of its own issue and held in the treasury. Interest and exchange—

Q. One minute. This $1,096.90 is Minnesota's share?

A. Yes, sir.

Q. What was the total of which that is a part?

POOR COPY

A. $1,830. The items that I have just stated will aggregate $38,421.54. The interest and exchange that the Company paid in excess of that collected during the year amounted to $986.78; that is Minnesota's proportion. This amount deducted from the $38,421.54 leaves the amount assigned to Minnesota $37,434.76, which sum is not included in the returns on Section B against Other Income.

Q. Then, according to your figures, to get the net income of the road for Minnesota you would increase your $794,472.58 by $37,434.76?

A. If it was proper to include such [illegible].

Q. And also to get the actual for the year by increasing it by a further sum of about $4,000 to equalize the taxes. You gave us that yesterday. In other words, the amount of taxes included for that year on Section B, as you figured, was nearly $4,000 more than actually would be paid on the gross earnings for the year?

A. Yes, sir.

Q. So then, your net earnings would be increased by this excess of the tax charge there and by the $37,434.76, assuming that we were entitled to credit for it?

A. Yes, sir.

Q. Now, will you give us the total amount of this interest and exchange for the entire system.

A. $2,611.22.

Q. My recollection is that you said yesterday the total for the system of these items, interest on investments, dividends on stocks, interest and exchange was $65,788.75, or did that refer to something else?

A. That is the entire line.

Q. You gave $37,434.76 as the Minnesota proportion of these items, interest on investments, dividends on stocks, interest and exchange.

Mr. BUTLER: What year was that, Mr. Durment?

POOR COPY

Mr. DURMENT: 1909.

Q. Included to make up that sum was an item of something over $20,000 for interest on bonds; I take it that that sum for interest on bonds included in the Minnesota total was a part of a larger amount for the entire system?

A. Yes, sir.

Q. What was the amount of that item for the entire system?

A. $44,221.19.

Q. On what basis did you make your division between Minnesota and the rest of the system in this item interest on bonds?

A. On a track mileage basis.

Q. It appears from your report to the State Railroad and Warehouse Commission for the year 1908 that there was a part of the income of your line Interest on Sundries, $265,168.12; I suppose there was a similar income for the year 1909, wasn't there? I mean as to its source, that is, such an income from a similar source for the year 1909.

A. Yes, sir; the source of income for both years would be the same.

Q. Well, what I am getting at is this: You have, for instance, dividends on stock for the years 1907 and 1908. You reported dividends on stock for the entire system $4,144.01.

A. That is the St. Paul Union Depot Company.

Q. For that same year you reported interest on bonds owned, for the system, $36,983.97?

A. Yes, sir.

Q. And you also reported interest on sundries $265,168.12; now, was that the same as interest and exchange for the year 1909 on your Exhibit 33, Section B?

A. $250,000 of that sum represents interest upon some five per cent five-year notes that were issued to assist in the building of the line west of Watertown. The Minneapolis & St. Louis issued notes, assumed the interest and paid it and then made

a recharge entry on their books against the construction accounts.

Q. That is, they would deduct from their income that much?

A. They paid the interest in the first place and then to recover, they charged it up to the construction account and credited interest.

Q. Yes, but the point was, it still left that much money in their hands from their income available for use, didn't it?

A. No, sir.

Q. Well, it is put in here as a credit, as a receipt in the report to the state of Minnesota.

Mr. BUTLER: They paid the interest first, Mr. Durment, and, having the obligation in the treasury, ordered it back.

Mr. DURMENT: That may be, that they did pay it first and they had it represented as an obligation, but they also collected it back or took it out, segregated it, so they could use it for other purposes from their income.

Q. Well, your interest charge for that year was $592.60?

A. If you will turn to page 27, 1908, you will find an entry thereon under the heading Total Par Value Outstanding against the second item (notes) $5,000,000. In the fourth column you will also find interest entered of $250,000, which item forms a part of the total interest charges of $1,174,558.14. If you will turn to page 41 you will find carried forward to that page under deductions from gross corporate income, against the item Interest Accrued on Funded Debt, the same amount, $1,174,558.14. So that the credit appearing on page 39 in the amount $265,168.12 is offset under the deductions appearing on page 41, as stated.

Q. Well now, let's see. There were five millions carried as an outstanding obligation—

A. Yes, sir.

Q. —and there was charged up against it as an expense for interest, $250,000?

A. That is, it was charged to income account.

Q. That is charged to income acocunt, that goes in as a credit?

A. Goes in as a debit there.

Q. Well that means that it was treated as having been paid?

A. Yes, sir.

Q. And then it was treated as having been deducted from the gross revenue?

A. The one offsetting the other.

Q. That is what I want to get at. I want to get the modus operandi so I can understand and judge for myself whether one offsets the other.

A. The net income as it appears on pages 39 and 41 is not affected by the debit and credit entry.

Q. The point I make is this: You have here charged up as an expense of the road of some sort $250,000 for interest on this five millions?

A. Yes, sir.

Q. That is, on page 27 you have so charged it?

A. Yes, sir.

Q. On page 39 you charge it to the income account.

A. We credit in that case.

Q. Well, credit the income account with the sum including this $1,177,597.15. I mean with that sum which includes the $250,000.

A. Then you want to quote page 41 in that event, if you are quoting the charges.

Q. Take page 39. You have there net operating revenue, $1,177,597.15.

A. That is correct.

Q. Now, what does that mean?

A. That is on page 41 and it represents the interest that the Company accrued on its books and paid.

Q. Well, but here, on page 39 your net operating revenue was $3,826,516.07, wasn't it?

A. Yes, sir.

Q. Now, this $250,000 on page 27 is no part of that sum entered there as operating revenue, is it?

A. No, sir.

Q. Your operating expense, $2,648,918.92 (on page 65) is any part of that $250,000 which is charged as an interest expense on page 27 included in this operating expense of $2,648,-918.92?

A. No, sir.

Q. Then this net operating revenue of $1,177,597.15 does not include any part of the $250,000 referred to on page 27, either as an addition or deduction?

A. It does not.

Q. Now, where in your income account is the entry which shows the road received this $250,000 for interest in that year?

A. In the item appearing on page 39, amounting to $265,-168.12.

Q. Where on that report is entered the item showing you paid out that $250,000 for interest?

A. On page 41 in the item $1,174,558.14 entered against interest accrued on funded debt, page 27.

Q. Then, if I understand your position right, this $250,000 did not increase or decrease the corporate income for that year?

A. It did not.

Q. Either way?

A. Neither way.

Q. Nothing more nor less than a mere bookkeeping entry?

A. Exactly.

Q. And yet it was reported to the State as income from the whole line?

A. Entered both ways in the report.

Q. Well, that is, it would be entered as a debit to income and a credit to income?

A. Yes, sir.

Q. Are there any other items of income which you have not mentioned for the year 1909 not included in your figures on Section B for the income of that year?

A. No, sir.

Q. You may now explain this item $63,306.06, Other Income, in the year 1909; just what it includes and how you arrived at it.

A. It includes rent collected from the Northern Pacific Railway Company for use of facilities in Minneapolis, $8,679.97; rental collected from the Soo Line for use of track, Third avenue north to Twentieth avenue south in Minneapolis, $10,192.73; rental collected from the Great Western Railway Company for use of track, Twentieth avenue south to Cedar avenue, in Minneapolis, $337.50; rental collected from the Omaha for use of track, Minneapolis to Merriam Junction, $31,684.10; rental collected from the Minneapolis Railway Transfer Company for use of property in Minneapolis, $72,299.49; rental collected from the Illinois Central Railway Company for use of terminals at Albert Lea, Minnesota, $3,866.28; at the same point, rental collected from the Iowa Central Railway Company, $3,866.28; rental collected from tenant of a house owned by the Company located in Kenwood, near Cedar Lake shops, $205.23; rental collected from the Minneapolis & St. Paul Suburban Railway Company for use of track, Tonka Bay line, which is from the junction of our line at Manitou Junction into the village of Tonka Bay, $2,000. All sums that I have quoted represent the entire rental collected, and it is all assigned to Minnesota. For discounting miscellaneous bills (taking advantage

of the thirty-day clause), $583.16. This sum is a portion of a total collection of $1,543.15 and is arrived at on the track mileage basis, which gives to Minnesota 37.79 per cent and by charging off during the year unclaimed wages, $26.82, which sum is arrived at on the same basis as the figures for cash discount. These items aggregate $133,741.56 and represent the income receipts. I will now take up the income payments. Payments made to the Northern Pacific Railway Company for use of track between Minneapolis and St. Paul, $42,946.96; rental paid to the Northern Pacific for use of terminals at St. Paul, $10,068.24; rental paid the St. Paul Union Depot Company for depot facilities at St. Paul, $3,913.56; rental paid to the Minnesota Transfer Railway Company for use of facilities at the Transfer, $8,595.14; rental paid the St. Paul Union Depot Company for storage facilities, $2,100; rental paid the Great Northern Railway Company for use of Minneapolis passenger station, $1,917.48; payment made to the Illinois Central Railway Company for dining car service between Albert Lea and St. Paul, Minnesota, $410.78. These items represent the full payments made by the Company, and the entire amount is assigned to Minesota. Net payment made for use of foreign equipment heretofore referred to as car mileage per diem and hire of equipment, $483.34, which represents Minnesota's proportion of the net payment for the entire line, account of the same items of $1,279.01 and is arrived at on the basis of track mileage. These payments foot $70,435.50, which sum deducted from the total income receipts of $133,741.56 leaves a net income for the state of Minnesota of $63,306.06, as per Section B.

Q. Then, as I understand it, the item Earnings from Operation for 1909, on Section B, does not include any of the amounts received for this car per diem and mileage or hire of equipment, and the operating expenses carried on that section do not include any of that item, either?

A. They do not.

Q. The net income (that is, the net balance) of that account is carried under the general head of income for the system, $1,279.01, and Minnesota's proportion of it is included in the $63,306.06 Other Income?

A. Yes, sir.

Q. Between the year 1907 and the year 1909 it seems that the net balance in favor of your road on those items has decreased nearly $99,000?

A. A little over, it would be the sum of $99,000 plus your 12—

Q. This $1,279.01 was the minus quantity?

A. Yes, sir.

Q. The net balance of that account of car per diem and mileage and rent of equipment was against the road?

A. Was on the other side of the books.

Q. Then it has decreased over a hundred thousand?

A. Yes, sir.

Q. Can you tell us why that decreased?

A. It is a question of operation, Mr. Durment.

Q. I know, but can you explain why there should be so great a decrease in that one item in such a short length of time?

A. Of course, I couldn't explain that feature of it. I am not well enough acquainted with the operating department to state, but it is due to the fact that we used more of foreign equipment during the year ended June 30, 1909, than we did during the year ended June 30, 1907. There may be several conditions that would bring about the result. There may have been more of our own cars at home during that period.

Q. The road hasn't purchased any considerable number of cars in that time? It hasn't increased its equipment of cars materially in that time?

A. I don't think it did. We purchased some last year, but

those cars would not affect the results for the year ending June 30, 1909.

Q. Well, it would ordinarily result from an increase or decrease of business, wouldn't it?

A. Not altogether.

Q. Oh, perhaps not altogether, but very largely?

A. Yes, it should.

Q. Would it be an increase or decrease of business that would affect that?

A. Well, naturally I should say it would be an increase of business.

Q. An increase of business would tend to throw the balance the other way, would it?

A. I should think it would, because all roads are anxious to keep their own equipment out away from home as much as possible when business is slack.

Q. Now we will take the 1908 column, Section B: As I understand, this $2,298,159.41, earnings from operation, is the total amount received for freight charges for transportation and for passenger transportation on all business of the road (that is, inter and intra state) in Minnesota during the fiscal year ending June 30, 1908?

A. It would include all such revenues and it would include some others.

Q. What others does it include? That is what I want to know. As I understand you, in the year 1908 that included only those items?

Mr. BUTLER: No, I think, Mr. Durment, you are in error, in mail, demurrage, and all that.

Q. If I am wrong about that, then I want you to itemize the amounts which go to make up your $2,480,303.88 for the year 1909. I want to know just exactly what it includes. I understood before that it included only the revenue from

freight charges for transportation and passenger, that it didn't include mail and the other things.

A. Oh, yes, it includes everything.

Q. If that is so, I want to know the items making that up. Read them off.

A. There are a lot of them.

The MASTER: Can't they be prepared and handed to the Reporter during the noon hour?

Mr. DURMENT: Yes, as far as I am concerned.

Mr. BUTLER: That is satisfactory.

Q. As I understand, your Section B is made up on the basis of the present form of reports, all through; isn't it?

A. Yes, I should say it was.

Q. And that would make your 1906 and 1907, if nothing else, differ from our 1906 and 1907 as we have it in our report?

A. That is it; that is where it comes in.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. I understand, that during the noon hour you have had prepared a sheet on which you have entered the separate items going to make up, on Exhibit 33, Section B, the earnings from operation for the years 1906, 1907, 1908 and 1909.

A. Yes, sir.

Q. This sheet, comparing it with the report to the State Railroad Warehouse Commission, shows that the earnings from operation, for the years 1908 and 1909, shown on Section B of Exhibit 33, are identical, not only in total amount but in the items which make up the total, with the report to the State?

A. Yes, sir.

Q. There is some difference, however, in the figures shown on Section B of Exhibit 33 for earnings from operation for the years 1906 and 1907 and those shown in the report of the road to the State?

A. Yes, sir.

Q. The sheet which you have prepared, as I understand it, has pointed out those particular items which were omitted in this Section B of Exhibit 33 in arriving at the total of earnings from operation in those years?

A. Yes, sir.

Q. And the addition of those items you have set out there as omitted to the total for those two years under that head in Section B of Exhibit 33 will make the total the same as reported to the Railroad and Warehouse Commission for those years?

A. Yes, sir.

The statement prepared by witness as above referred to is as follows:

THIS PAGE BOUND VERTICAL IN BOOK

STATEMENT OF INCOME ACCOUNT.

Taken from Reports to State of Minnesota.

	1906	1907	1908	1909
Total passenger revenue	$666,523.43	$650,266.80	$607,791.57	$620,464.87
Mail	51,666.65	52,011.57	52,491.71	56,647.05
Express	32,260.87	39,413.20	47,205.53	51,798.65
Extra baggage and storage	16,942.46	*17,169.93	10,740.01	9,277.38
News privilege	1,725.84	1,725.84	.....	.....
Freight revenue	1,773,492.15	1,714,852.57	1,538,602.61	1,689,150.30
Miscellaneous	5,949.15	5,093.40	.....	.....
Total as per Exhibit 33, Section "B"	$2,548,560.55	$2,480,533.31	.....	.....
Parlor and chair car revenue	.....	.....	592.54	.....
Switching	.....	.....	25,861.48	31,235.22
Miscellaneous transportation	.....	.....	1,026.94	1,410.40
Station and train privileges	.....	.....	2,414.00	2,322.07
Storage freight	.....	.....	393.21	†138.34
Storage baggage	.....	.....	371.18	445.87
Car service	.....	.....	8,574.88	6,994.37
Rents of buildings and other property	.....	.....	1,704.98	1,842.41
Miscellaneous other than transportation	.....	.....	388.77	1,816.40
Special service train	.....	.....	.....	147.50
Joint facilities credit	.....	.....	.....	6,889.73
Total as per Exhibit 33, Section "B"	.....	.....	$2,298,159.41	$2,480,303.88

The figures reported to the State for the years 1906 and 1907 include as revenues the following items, which are omitted from Ex. 33, Sec. "B.":	1906	1907		
Switching charges, balance, car per diem and mileage	$28,903.09	$90,047.90		
Rents from tracks, yards and terminals	134,315.34	133,702.26		
Hire of equipment, balance	6,196.37	9,585.83		
Totals as per Minnesota reports	$2,717,975.35	$2,713,869.30	$2,298,159.41	$2,480,303.88

* Baggage. † Red Ink

Q. There is no other item of income of the road for any of those years (for the years 1906 and 1907) which is not shown on this statement you have just furnished?

A. There is none.

Q. And there is no item of income of the road for 1908 or 1909 not shown on this statement such as you have heretofore testified to?

A. These returns on this statement would be what are classed as revenues, operating revenues; but other income, of course, would be included in the item as it appears in Section B of Exhibit 33 against the item Other Income.

Q. But what I mean to say is (we have gone over the figures for 1908 and 1909 in detail very largely), there is nothing to be added to the income shown on this sheet that is to be written in here as a part of your answer for revenue or income except such, if any, as you have specified heretofore in your testimony?

A. There is none.

Q. I suppose that on this Section B of Exhibit 33 for the years 1903, 1904 and 1905 you have the earnings from operation shown as in the case of the earnings from operation shown for 1906 and 1907, excluding the same items that were excluded for the years 1906 and 1907? I mean the same class of items.

A. Yes, sir. The results shown as earnings from operation for the years 1903 to 1907, inclusive, appearing on Section B of Exhibit 33, are prepared all on the same basis.

Q. Including the same class of items and excluding the same class?

A. Yes, sir.

Q. Now, as to the operating expenses. Do the operating expenses as shown on this Section B of Exhibit 33, for any of these years mentioned, differ from the operating expenses shown in your reports to the State? If so, in which year do they differ and in what respect?

A. For the years 1908 and 1909, the operating expenses, as shown in Section B of Exhibit 33, will not agree with the operating expenses as returned in the report to the Railroad & Warehouse Commission, for the reason that in that report the Commission desired that the operating expenses should be apportioned to Minnesota based upon train mileage; whereas, our division, as among the states, was on as nearly an actual basis as it was possible for us to determine. As previously explained, we allocated where we could, and, where the expense was incurred as between two or more states, this division was made on the basis of the train mileage run or according to the nature of the expense, as nearly as it would be possible to assign expenses by states.

Mr. BUTLER: Which method gives the largest amount to the State, the one they ask for or the one that you keep?

WITNESS: I think you will find, in the testimony which I have already given, that the operating expenses as assigned to Minnesota for the year ending June 30, 1909, on the train mileage basis is $165,993.04 greater than the results appearing on Section B of Exhibit 33 for operating expenses.

Q. That is, adopting what the road considers the proper method of dividing these expenses, your operating expenses shown for 1909 on Section B of this exhibit is $165,993.04 less than you reported them to the State?

A. Yes, sir.

Q. And that was due to the fact that the State wanted them reported upon the basis of train mileage, you say?

A. They asked for it to be reported that way and we so reported it.

Q. Now, outside of that, would there be any difference in the operating expenses of your road for the years 1908 and 1909, or either of them, as shown on this Section B and as reported to the State?

A. That would be the only difference or the cause for any difference, but for the years 1903 to 1907, inclusive, the operating expenses, as they appear on Section B of Exhibit 33, include in every year the balances, whether a net debit or a net credit of per diem, hire of equipment and switching charges.

Q. If it were a net credit it would appear in earnings from operation for those years, wouldn't it?

A. In the report to the State it would, but not in Section B. In Section B it would appear in operating expenses for every year whether it was a net credit balance or a net debit balance for each account.

Q. If it were a net debit balance it would increase the figure for operating expenses over what it otherwise would be?

A. No, sir, it would not affect the returns for operating expenses in that case, because the operating expenses as reported to the State would also be asked for and shown therein.

Q. No, you don't understand my question. Referring now to Section B of Exhibit 33, your operating expenses for the years 1903, 1904, 1905, 1906 and 1907 includes or is affected by the net balance of these items you speak of?

A. Yes.

Q. Now, if that net balance was a debit balance, on the minus side, it would make these figures on Section B for operating expenses larger than they otherwise would be?

A. Yes, if the balance was a credit balance.

Q. If the balance were a credit balance it would decrease these figures, would it not?

A. Well, these figures are already decreased by the credits. It depends upon what you are comparing with, our report to the State or this exhibit.

Q. Maybe I can make it clearer this way. If the figures you have on this Section B for operating expenses for the years 1903, 1904, 1905, 1906 and 1907 contain, any of them, a debit

balance to this account, it is larger than it would be if it had a credit balance?

A. Oh, yes.

Q. And if it contains a credit balance, it is smaller than it would be if it had a debit balance?

A. Yes, sir.

Q. In other words, the operating expense under that system is increased by a debit balance and decreased by a credit balance?

A. Yes, sir.

Q. And is that the only difference between the items reported to the State for operating expenses in those years 1903 to 1907 and those in Section B?

A. Yes, sir.

Q. Referring to the matter of taxes on this Section B,—you have explained in detail the item for taxes in the year 1909 and how it happens that it appears to be more than a straight four per cent on the gross earnings. Under the head of Earnings from Operation I suppose the same thing is true with reference to the taxes shown on this Section B for each year, isn't it?

A. Yes, sir.

Q. The actual amount of tax for the fiscal year would be four per cent on the amount shown in the column opposite Earnings from Operation?

A. Yes, sir; if assigned to each year on the actual basis.

Q. Now, I would like you to give me the details for the item Other Income for the years 1908 and 1907. I think you have not given them for either year. Well, you might give it to me for 1906, 1907 and 1908.

A. As I explained this morning, we didn't quite get back to 1907. We worked until the lights went out last night and at it again this morning, but—

Q. Well, perhaps we can do this,—can you work it out in detail, as you did in the case of 1909, and send it over and we

can have it entered in the record without another session, if that is satisfactory.

A. I would be glad to do that.

Mr. BUTLER: Have it entered as his answer to this question.

Mr. DURMENT: For those years, 1906, 1907 and 1908.

Q. Now, you also gave us a detail of those things which are not included in the item Other Income; for instance, interest on investments, dividends on stock, interest and exchange for 1909. I would like to have the same detailed statement as to those matters for the years 1906, 1907 and 1908. And if you will make it out, that may be entered as your answer to this question when you send it over.

Mr. BUTLER: That is agreeable to us.

Q. When you give me the information I have just asked for, will there be any other item of income for those years, or either of them, which is not included or will not be included in the information I have just asked for and the amount in Section B under the head of Earnings from Operation?

A. It will include everything.

Q. That will include everything?

A. Yes, sir.

Q. Now, I call your attention to Section A of this Exhibit 33. Is that Section A made up upon the same basis all through as to the various items included in it as your Section B except that one is for the system and the other one is for the State?

A. Made upon exactly the same basis.

Q. Well, take Other Income, for instance, on Section A, does that include interest on investments, dividends on stock and interest and exchange?

A. I have answered you incorrectly in that former answer.

Mr. BUTLER: The note distinguishes.

WITNESS: Yes, the note distinguishes the difference between the two reports.

Q. That is the only difference?

A. That is the only difference.

Q. That under the head Other Income, in Section A, you include all the items which are included in Other Income on Section B, and in addition thereto, the items interest on investments, dividends on stock, interest and exchange are excluded on Section B?

A. Yes, sir.

Q. And except as the plan followed in Section B necessitates a difference between the items shown on that and in the reports made to the Railroad & Warehouse Commission, the figures shown on Section A correspond with the reports made to the State of the entire system?

A. Yes, sir.

Mr. BUTLER: In preparing the information that is to be read into the record as your answers to some questions Mr. Durment has asked you, I would like to have you give information showing the total amount of interest on investments, dividends on stock, interest and exchange that is included opposite the entry Other Income on Section A, for each of the years represented, so that it may be subtracted from the total net if the Court is of opinion that it is material and ought to be subtracted.

Q. Does this item of Other Income on Section A include anything that was not actually received by the Company in the years mentioned?

A. Why, I should answer that yes, it would include interest that accrued on first mortgage bonds of the Company that are held in the treasury which are simply passed from one pocket into the other.

Q. Yes, but the money was retained,—it was not a mere bookkeeping entry, was it?

A. Well, the payment of the money does not appear in any of these items on this table.

Q. Well, now let us see. That might be a matter of considerable importance one way or the other to us. I find from Defendants' Exhibit M–Hillman, for the year ending June 30, 1907, a net credit from income, whole line, of $233,590.25. Of this amount there is $15,631.27 dividends on stock, $67,206.72 interest on bonds, and under miscellaneous income, $146,599.40. Now, I find here on your Section A "Other Income, $103,285.57" for that year. Isn't it a fact that in arriving at your $103,285.67, Other Income, you did not take into account any of these bookkeeping items where a charge is balanced by a credit, but you did take into account moneys actually received? Inasmuch as the witness has agreed to furnish a statement for those years showing just what was in that item Other Income, and whether it includes anything which is a mere bookkeeping item, and if so what, that may be written in here as the other information you will furnish.

The data prepared by the witness in response to the questions above are as follows:

Minneapolis, Minn., May 23, 1910.

MR. PIERCE BUTLER,

624 Endicott Building,

St. Paul, Minn.

DEAR SIR: I hand you herewith five each of the following statements:

Analysis of Income Account for the years 1906, 1907, 1908 and 1909.

Statement of items included on Section "A" of Exhibit 33, which are omitted on Section "B."

Statement showing, Earnings, Operating Expenses, Taxes, Other Income, and Net Earnings, years 1903 to 1909, inclusive.

This latter statement should be substituted for Section "A" of Exhibit 33, because the results for the years 1908 and 1909

have been changed. This is the result of the first five years being compiled by one clerk, and the last two by another, and were on different bases.

The statement as now prepared, will show the Net Earnings arrived at on the same basis for all years.

Yours truly,

L. G. SCOTT,

Auditor.

THIS PAGE BOUND VERTICAL IN BOOK

Scott

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY.

(Entire System.)

Year Ended June 30th.

	1903	1904	1905	1906	1907	1908	1909
Earnings from operation	$3,265,472.37	$2,850,565.17	$3,076,755.89	$3,726,665.50	$3,873,668.35	$3,826,516.07	$4,171,315.17
Operating expenses	1,908,667.24	1,690,091.81	1,828,884.87	2,143,727.97	2,380,506.80	2,648,918.92	2,845,606.08
Earnings over expenses	1,356,805.13	1,160,473.36	1,247,871.02	1,582,937.53	1,493,161.55	1,177,597.15	1,325,709.09
Taxes	119,274.75	111,209.24	117,489.93	165,468.59	176,624.58	167,426.45	192,244.14
Earnings over expenses and taxes	1,237,530.38	1,049,264.12	1,130,381.09	1,417,468.94	1,316,536.97	1,010,170.70	1,133,464.95
Other income	161,364.92	180,260.37	147,489.87	94,493.05	103,285.57	231,217.82	269,550.23
Net earnings	1,398,895.30	1,229,524.49	1,277,870.96	1,511,961.99	1,419,822.54	1,241,388.52	1,403,015.18

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY.

Statement of Items Included on Section "A" of Exhibit 33, which are omitted on Section "B."

	1906	1907	1908	1909
Interest on investments	$29,560.01	$71,371.51	$86,534.64	$66,569.97
Dividends on Stock	1,955.00	1,955.00	1,955.00	1,830.00
Interest and Exchange	40,416.19	18,110.57	*592.60	*2,611.22
Total	$71,931.20	$91,437.08	$87,897.04	$65,788.75

* Red Ink.

AN ANALYSIS OF "OTHER INCOME" As S

		1905		
		Entire Line	Minnesota	
Other Income—Interest on Investments:				
St. Paul Union Depot Co.	$4,000.00	Local		$4,11
Minn. Transfer Ry. Co.	5,760.01	Local		6,41
Interest on M. & St. L. Bonds	19,800.00	Owned M'lge		30,86
Interest on D. M. & Ft. D. Bonds		$29,560.01	$21,659.81	30,00
Dividends on M. & St. L. Stock in Treasury—Owned mileage		1,955.00	1,174.95	
Rent of Great Northern crossing—N. P. Ry. Co.		282.96	282.96	
Rent of track, 3rd Av. N. to 20th Av. S.—N. P. Ry. Co.		8,334.48	8,334.48	
Rent of track, 3rd Av. N. to 20th Av. S.—M. St. P. & S. S. M. Ry. Co.		8,075.36	8,075.36	
Rent of track, 20th Av. S. to Cedar Av.—C. G. W. Ry. Co.		600.00	600.00	
Rent of track, Minneapolis to Merriam Jct.—C. St. P. M. & O. Ry. Co.		31,677.72	31,677.72	
Rent of track, Minneapolis Lower Yard—Mpls. Ry. Tr. Co.		78,104.82	78,104.82	
Rent of track, Gowrie to Des Moines, Ia.—C. R. I. & P. Ry. Co.		30,822.18		
Rentals—M. D. & P. Ry. Co.				
Rentals—D. M. & Ft. D. R. R. Co.				
Rent of terminals at Albert Lea—Ill. Cent. R. R. Co.		1,620.00	1,620.00	
Rent of terminals at Albert Lea—Iowa Cent. Ry. Co.		5,620.00	5,620.00	
Rent of terminals at Ft. Dodge and Spencer—D. M. & Ft. D. R. R. Co.		2,895.32		
Rent of terminals at Des Moines, Iowa—Iowa Cent. Ry. Co.		2,108.00		
Interest and Exchange—Operated Mileage		40,416.19	19,678.08	
Material Premium—Operated Mileage		10,086.61	3,207.44	
Cash Discount—Operated Mileage		1,585.51	805.12	(Op'td
Hire of equipment				
Unclaimed wages—Operated Mileage		141.24	71.72	
Commissions on Town Lot Sales—M. D. & P. Ry., South Dakota		4,722.71		
Miscellaneous Rentals—Allocated		4,023.96	1,673.55	
Miscellaneous Rentals—Rent of house, Kenwood				
Rent of track, Tonka Bay Line—Mpls. & St. Paul Suburban Ry.				
Total Other Income		$262,682.07	$182,586.01	
Less Charges as follows:				
Rent of track, Minneapolis to St. Paul—N. P. Ry. Co.		$43,597.80	$43,597.80	
Rent of track, Tara to Ft. Dodge, Iowa—Ill. Cent. R. R. Co.		4,114.44		
Rent of track, Spencer to Ruthven, Iowa—C. M. & St. P. Ry. Co.		3,390.86		
Rent of terminals at St. Paul—N. P. Ry. Co.		11,401.78	11,401.78	
Rent of terminals at St. Paul—St. Paul Union Depot Co.				
Rent of terminals, Minn. Transfer—Minn. Tfr. Ry. Co.				
Rent of terminals at Ft. Dodge and Spencer—M. & St. L. R. R.		2,895.32		
Rent of terminals at Des Moines—Des Moines Union Ry. Co.				
Rentals—D. M. & Ft. D. R. R. Co.				
Rent of Passenger Storage Track, St. Paul—St. Paul Union Depot Co.		2,100.00	2,100.00	
Rent of Minneapolis Passenger Station—G. N. Ry. Co.		1,917.48	1,917.48	
Rental, M. D. & P. Ry.—South Dakota				
Rental, D. M. & Ft. D. R. R.—Iowa		98,721.34		
Rentals				
Outside operations—Dining car service				
Interest and Exchange—Operated Mileage				
Hire of equipment—Operated Mileage				
		$168,139.02	$59,017.06	
Grand Total Other Income		$94,493.05	$123,568.95	
Less:	Minn			Minn.
Interest on Investments	$21,659.81			$29,06
Dividends on Stock—M. & St. L.	1,174.95			1,17
Interest and Exchange	19,678.08		42,512.84	7,53
Add: Interest and Exchange				
			$81,056.11	

COPY BOUND CLO

IIS RAILROAD COMPANY.

ON SECTIONS "A" AND "B" OF EXHIBIT 33.

1907		1908		1909	
Line	Minnesota	Entire Line	Minnesota	Entire Line	Minnesota
ocal		$4,144.01 Local		$4,143.99 Local	
ocal		6,983.97 Local		6,673.97 Local	
wned Mil'ge		75,406.66 Owned Mil'ge		55,752.01 Owned Mil'ge	
one		.....		.....	
$71 371.51	$29,063.92	$86,534.64	$38,417.38	$66,569.97	$37,324.64
1,955.00	1,174.95	1,955.00	1,174.95	1,830.00	1,096.90
282.96	282.96	282.96	282.96	282.96	282.96
8,334.48	8,334.48	8,383.95	8,383.95	8,397.01	8,397.01
12,033.36	12,033.36	10,099.80	10,099.80	10,192.73	10,192.73
600.00	600.00	300.00	300.00	337.50	337.50
31,677.72	31,677.72	31,677.72	31,677.72	31,684.10	31,684.10
75,512.48	75,512.48	70,959.68	70,959.68	72,299.49	72,299.49
32,621.01	.....	39,358.24	.....	30,698.94	.....
.....	.....	22,491.32	.....	103,944.35	.....
.....	.....	.....	.....	12,576.75	.....
10,212.75	10,212.75	3,866.28	3,866.28	3,866.28	3,866.28
4 613.99	4,613.99	3,866.28	3,866.28	3,866.28	3,866.28
2,925.96	.....	2,925.96	.....	2,925.96	.....
1,184.00	.....	576.01	.....	385.01	.....
18,110.57	7,537.62	.....	.....	.....	.....
17,557.81	7,307.56	.....	.....	.....	.....
2,408.36	1,002.36 (Op'td Mlg)	1,718.99	649 60 (Op'td Mlg)	1,543.15	583.16 Train M'lge.
.....	.....	42,302.71	30,586.25	.....	.....
127.72	53.16	815.61	308.22	70.97	26.82
.....	.....	.....	.....	.....	.....
4,343.86	1,917.77	.....	.....	.....	.....
.....	.....	75.19	75.19	205.23	205.23
.....	.....	500.00	500.00	2,000.00	2,000.00
$295,873.54	$191,325.08	$328,690.34	$201,148.26	$353,676.68	$172,163.10
$43,621.26	$43,621.26	$43,613.15	$43,613.15	$42,946.96	$42,946.96
3,832.25	.....	1,892.99	.....	2,022.44	.....
3,390.84	.....	4,748.73	.....	3,750.44	.....
11,395.43	11,395.43	11,695.69	11,695.69	10,068.24	10,068.24
.....	.....	1,814.62	1,814.62	3,913.56	3,913.56
.....	.....	7,403.72	7,403.72	8,595.14	8,595.14
2,925.96	.....	2,925.96	.....	2,925.96	.....
.....	.....	1,636.49	.....	1,575.22	.....
.....	.....	1,965.01	.....	.....	.....
2,100.00	2,100.00	2,100.00	2,100.00	2,100.00	2,100.00
1,917.48	1,917.48	1,917.48	1,917.48	1,917.48	1,917.48
22,491.32	.....	.....	.....	.....	.....
100,913.43	.....	.....	.....	.....	.....
.....	.....	5.00	.....	10.00	.....
.....	.....	940.00	723.29	410.78	410.78
.....	.....	592.60	223.94	2,611.22	986.78
.....	.....	14,221.08	.....	1,279.01	483.34
$192,587.97	$59,034.17	$97,472.52	$69,491.89	$84,126.45	$71,422.28
$103,285.57	$132,290.91	$231,217.82	$131,656.37	$269,550.23	$100,740.82
		Minn. $38,417.38 1,174.95		Minn. $37,324.64 1,096.90	
.....	37,776.49	.....	39,592.33	.....	38,421.54
.....	.....	.....	$92,064.04	.....	$62,319.28
.....	.....	.....	223.94	.....	986.78
.....	$94,514.42	.....	$92,287.98	.....	$63,306.06

E IN CENTER

Minneapolis, Minn., May 26, 1910.

MR. PIERCE BUTLER,

Endicott Building,

St. Paul, Minn.

DEAR SIR: Mr. Durment came to my office with copies of the analysis of "Other Income," which I mailed you on May 23, and asked to have the item of "Interest on Bonds," under "Interest on Investments," for the years 1908 and 1909, separated so as to show on account of what bonds the interest was received. He also asked to have an explanation of the change made in the Section "A," Exhibit 33, I sent and asked to have substituted for the one originally introduced.

I have had the men in the office go through the books with him and give him exactly the information he has called for. He thinks it ought to go into the case, along with the tables I sent you, and has stated it will save calling me for further cross-examination to show these things, if I put it in the way of a supplementary statement, so that it may be filed with the tables as a part of the record.

I have prepared those supplemental statements and send you herewith several copies. I have also sent two copies to Mr. Durment direct.

Yours truly,

(Signed) L. G. SCOTT,

Auditor.

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY.

Supplement to Exhibit 33, *Section "A"—Corrected.*

The figures for the years 1908 and 1909 in Exhibit 33, Section "A"—Corrected, differ somewhat from the figures as given in the Exhibit 33, Section "A," introduced at the time I was on the stand. The difference is due to this:

The Minneapolis & St. Louis Railroad Company operates the Minnesota, Dakota & Pacific Railway Company and the Des Moines & Ft. Dodge Railroad Company under contract, by which the Minneapolis & St. Louis pays the interest on all the bonds of those roads and all operating expenses and turns over to each of those roads any net earnings there may be over and above the interest on its bonds and operating expenses. In the year 1908, these roads were operated by the Minneapolis & St. Louis at a net loss of $20,526.31, and for the year 1909 at a net loss of $116,521.10. The details of these sums appear in the Earnings, Operating Expenses and Taxes as assembled on Section "A."

This should be filed as supplementary to Section "A," Exhibit 33–Corrected, which I have asked to have substituted for the original Section "A," Exhibit 33.

(Signed) L. G. SCOTT,
Auditor.

May 26, 1910.

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY.

Supplement to the Analysis of "Other Income" as shown on Sections "A" and "B" of Exhibit 33.

On this analysis of "Other Income" there is carried under the head of "Interest on Investments," in the year 1908, $75,406.66 as interest on M. & St. L. bonds. This is interest on bonds owned by the M. & St. L. road, but $30,000.00 of the amount is interest it received on bonds issued by the Des Moines & Ft. Dodge Railroad and held in the treasury of the M. & St. L., and $45,406.66, interest on bonds issued by the M. & St. L. Road and held in its own treasury; and the item of $55,752.01, carried under the same heading on that analysis for the year 1909, is made up of $30,000.00 interest received on bonds issued by the Des Moines & Ft. Dodge Railroad and held by the

M. & St. L. in its treasury, and $25,752.01 interest on bonds issued by the M. & St. L. Road and held by it in its own treasury.

On this same analysis there is included under the head of "Income-Receipts" rentals due from the Minnesota, Dakota & Pacific Railway Company and Des Moines & Ft. Dodge Railroad Company; and under the head of "Income-Payments" rentals due the same Companies. These sums, in each instance, represent the net results from the operation of those properties by the M. & St. L. R. R. Co., under the operating contracts. When the results for a year show a deficit from operation, the amount will appear on this statement as a "Rental Receipt," because the M. & St. L. R. R. Co. is to be reimbursed for such deficit. If the properties are operated with a surplus, the amount will appear on the analysis as a "Rental Payment," because the surplus is paid those Companies.

(Signed) L. G. SCOTT,
Auditor.

May 26, 1910.

This closed the testimony.

GEORGE N. HILLMAN.
Official Reporter.

May 31, 1910.